रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 7] नई दिल्ली, फरवरी 9—फरवरी 15, 2014, शनिवार/माघ 20—माघ 26, 1935
No. 7] NEW DELHI, FEBRUARY 9—FEBRUARY 15, 2014, SATURDAY/MAGHA 20—MAGHA 26, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 28 जनवरी, 2014

का.आ. 519.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, चंडीगढ़ स्थित पंजाब एवं हरियाणा उच्च न्यायालय में दिल्ली विशेष पुलिस स्थापना द्वारा लगाई गई क्रिमिनल रिट याचिका सं. 12/2014 एवं 20359/2013 में उपस्थित होने के लिए श्री गगन प्रदीप सिंह बाल, वकील को विशेष लोक अभियोजक के रूप में नियुक्त करती है ।

[फा. सं. 225/4/2014-एवीडी-II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 28th January, 2014

S.O. 519.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Gagan Pradeep Singh Bal, Advocate as Special Public Prosecutor for appearing in CWP No. 12/2014 and 20359/2013 instituted by the Delhi Special Police Establishment (C.B.I.) in the Punjab and Haryana High Court at Chandigarh.

[F. No. 225/4/2014-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 30 जनवरी, 2014

का.आ. 520.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार, गृह विभाग (अपराध), बेंगलूर के दिनांक 06 नवंबर, 2013 के आदेश एचडी 6 सीओडी 2013 द्वारा प्राप्त सहमति से कुमारी सौजन्या पुत्री चंदप्पा गौडा, बेंलथंगाडी तालुक, धर्मस्थला के यौन उत्पीडन और हत्या के संबंध में भारतीय दंड संहिता की धारा 302 और 376 के तहत पुलिस धाना बेलथंगाडी, धर्मस्थला (कर्नाटक), में एफआईआर सं. 250/2012 के तहत दर्ज मामले की जांच हेतु और उपर्युक्त अपराधों से संबंधित या इनसे जुड़े प्रयासों, दुष्प्रेरणाओं और षडयंत्रों या इन समान तथ्यों से

होने वाले किन्हीं अन्य अपराधों के अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकार क्षेत्र का विस्तार संपूर्ण कर्नाटक राज्य पर करती है ।

[फा. सं. 228/5/2014-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 30th January, 2014

S.O. 520.—In exercise of the powers conferred by sub-section (l) of section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka, Home Department (Crimes), Bangalore vide Order No. HD 6 COD 2013 dated 6th November, 2013, hereby extends powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of FIR No. 250/2012 under sections 302 and 376 of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Belthangadi, Dharmasthala (Karnataka) relating to sexual harassment and murder of Kumari Sowjanya daughter of Chandappa Gowda, Belthangadi Taluk, Dharmasthala and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences arising out of the same facts.

[F. No. 228/5/2014-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 30 जनवरी, 2014

का.आ. 521.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केरल राज्य सरकार, गृह (एम) विभाग तिरुवनंतपुरम के दिनांक 01 नवंबर, 2013 की अधिसूचना जी.ओ. (एमएस) सं. 273/2013/गृह द्वारा प्राप्त सहमति से श्री टी.जी. नंद कुमार द्वारा कथित रूप से संपत्ति संचित करने संबंधी सतर्कता मामला सं. वी. ई. 19/2011/एस.आर.टी. और राज्य डाटा केंद्र के प्रचालन और रख-रखाव की निविदा और सुपुर्दगी मेसर्स रिलायंस कम्यूनिकेशन्स को देने संबंधी मामला सं. वी.ई. 20/2011/एस.आर.टी. की जांच हेतु और उक्त अपराधों से संबंधित या इनसे जुड़े प्रयासों, दुष्प्रेरणों और षड्यत्रों या इन समान तथ्यों से होने वाले किन्हीं अन्य अपराधों के अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकारक्षेत्र का विस्तार संपूर्ण केरल राज्य पर करती है ।

[फा. सं. 228/7/2014-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 30th January, 2014

S.O. 521.—In exercise of the powers conferred by sub-section (l) of section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Kerala, Home (M) Department, Thiruvananthapuram vide Notification G.O.(Ms.) No. 273/2013/Home dated 1st November, 2013, hereby extends powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Kerala for investigation of the Vigilance Case No. V.E.19/2011/S.R.T. related to the alleged amassment of wealth by Shri T.G. Nandakumar and Case No. V.E. 20/2011/S.R.T. related to the tender and entrustment of operation and maintenance of the State Data Centre to M/s. Reliance Communications and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences arising out of the same facts.

[F. No. 228/7/2014-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 30 जनवरी, 2014

का.आ. 522.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए बिहार राज्य सरकार, गृह (पुलिस) विभाग, पटना के दिनांक 18.09.2013 की अधिसूचना सं. 1/सी.बी.आई.-80-03/2013 एच.(पी) 6997 द्वारा प्राप्त सहमति से नवारुण चक्रवर्ती के अपहरण के संबंध में भारतीय दंड संहिता, 1860 (1860 के अधिनियम सं. 45) की धारा 364 और 366-क के तहत पुलिस थाना मुजफ्फरपुर टाउन (बिहार), में दिनांक 19.09.2012 को दर्ज मामला सं. 507/12 की जांच हेतु और उपर्युक्त अपराधों से संबंधित या इनसे जुड़े प्रयासों, दुष्प्रेरणाओं और षडयंत्रों या इन समान तथ्यों से होने वाले किन्हीं अन्य अपराधों के अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकारक्षेत्र का विस्तार संपूर्ण केरल राज्य पर करती है ।

[फा. सं. 228/75/2013-ए.वी.डी-II]

राजीव जैन, अवर सचिव

New Delhi, the 30th January, 2014

S.O. 522.—In exercise of the powers conferred by sub- section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Bihar, Home (Police) Department, Patna vide Notification No. 1/C.B.I.-80-03/2013 H. (P) 6997 dated 18.09.2013, hereby extends powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar for investigation of Case No. 507/12 dated 19.09.2012 under Sections 364 and 366-A of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Muzaffarpur Town (Bihar) relating to kidnapping of Navaruna Chakrabarty and attempts,

abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences arising out of the same facts.

[F. No. 228/75/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 30 जनवरी, 2014

का.आ. 523.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार, गृह विभाग (अपराध), बेंगलूर के दिनांक 14 नवंबर, 2013 के आदेश संख्या एचडी 68 सीओडी 2013 द्वारा प्राप्त सहमति से मांड्या शहरी विकास प्राधिकरण (कर्नाटक) द्वारा 5.00 करोड़ रु. (पांच करोड़ रुपए केवल) के दुर्विनियोजन के संबंध में भारतीय दंड संहिता, 1860 (1860 के अधिनियम सं. 45) की धारा 34, 408, 419, 420, 468 और 471 के तहत पुलिस थाना मांड्या पश्चिम, मांड्या जिला में एफआईआर सं. 273/2013 के तहत दर्ज मामले की जांच हेतु और उपर्युक्त अपराधों से संबंधित या इनसे जुड़े प्रयासों, दुष्प्रेरणाओं और षड्यंत्रों या इन समान तथ्यों से होने वाले किन्हीं अन्य अपराधों के अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकारक्षेत्र का विस्तार संपूर्ण कर्नाटक राज्य पर करती है ।

[फा. सं. 228/6/2014-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 30th January, 2014

S.O. 523.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka, Home Department (Crimes), Bangalore vide Order No. HD 68 CID 2013 dated 14th November, 2013, hereby extends powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of FIR No. 273/2013 dated 05.07.2013 under sections 34, 408, 419, 420, 468 and 471 of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Mandya West, Mandya District relating to misappropriation of Rs.5.00 crores (Rupees Five Crores only), Mandya Urban Development Authority (Karnataka) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences arising out of the same facts.

[F. No. 228/6/2014-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 30 जनवरी, 2014

का.आ. 524.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केरल राज्य सरकार, गृह (एम) विभाग तिरुवनंतपुरम के दिनांक 23 नवंबर, 2013 की अधिसूचना जी.ओ. (एमएस) सं. 287/2013/गृह द्वारा प्राप्त सहमति से अप्पू की मृत्यु के संबंध में पुलिस थाना पत्तनापुरम में दर्ज अपराध सं. 49/2013 (आपराधिक जांच विभाग, अपराध शाखा, अपराध सं. 53/सीआर/ एचएचडब्ल्यू-1/ टीवीएम/2013) की जांच हेतु और उक्त अपराधों से संबंधित या इनसे जुड़े प्रयासों, दुष्प्रेरणाओं और षड़यंत्रों या इन समान तथ्यों से उद्भूत किसी अन्य अपराध के अन्वेषण करने के संबंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकारक्षेत्र का विस्तार संपूर्ण केरल राज्य पर करती है ।

[फा. सं. 228/4/2014-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 30th January, 2014

S.O. 524.—In exercise of the powers conferred by sub-section (l) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Kerala, Home (M) Department, Thiruvananthapuram vide Notification G.O.(Ms.) No. 287/ 2013/Home dated 23rd November, 2013, hereby extends powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Kerala for investigation of Crime No. 49/2013 (Criminal Investigation Department, Crime Branch, Crime No. 53/CR/HHW-1/TVM/ 2013) registered at Police Station Pathanapuram relating to death of Appu and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences arising out of the same facts.

[F. No. 228/4/2014-AVD-II]

RAJIV JAIN, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 10 दिसम्बर, 2013

का.आ. 525.—वित्तीय आस्तियों का प्रतिभूतिकरण एवं पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 की धारा 21 की उप-धारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री आर. वी. वर्मा, अध्यक्ष एवं प्रबंध निदेशक, राष्ट्रीय आवास बैंक (एनएचबी) के रजिस्ट्रार तथा प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी (केन्द्रीय रजिस्ट्रार), भारतीय केन्द्रीय आस्ति

प्रतिभूतिकरण पुनर्गठन और प्रतिभूति हित रजिस्ट्री (सीईआरएसएआई) के रूप में उनके कार्यकाल को अगले छः माह के लिए अर्थात् 1-10-2013 से 31-3-2014 तक या अगले आदेशों तक, जो भी पहले हो, बढ़ाती है।

2. श्री आर. वी. वर्मा, राष्ट्रीय आवास बैंक के अध्यक्ष एवं प्रबंध निदेशक के रूप में अपने कर्त्तव्यों के अतिरिक्त केन्द्रीय रजिस्ट्रार का कार्यभार भी संभालेंगे ।

[फा. सं. 56/5/2007-रिकवरी]

मिहिर कुमार, निदेशक (रिकवरी)

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 10th December, 2013

S.O. 525.—In exercise of the powers conferred under Section 21(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Central Government hereby extends the tenure of Sh. R.V. Verma, Chairman & Managing Director, National Housing Bank for the additional charge for the post of Registrar and Managing Director & Chief Executive Officer (Central Registrar), Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI) for a further period of six months with effect from 01.10.2013 to 31.03.2014 or until further orders, whichever is earlier.

2. Shri R. V. Verma shall hold the charge of Central Registrar in addition to his duties as Chairman & Managing Director, National Housing Bank (NHB).

[F. No. 56/05/2007-Recovery]

MIHIR KUMAR, Director (Recovery)

कार्यालय मुख्य आयकर आयुक्त

जयपुर, 28 जनवरी, 2014

(सं. 12/2013-14)

का.आ. 526.—आयकर नियम, 1962 के नियम 2सी ए के साथ पठनीय आयकर अधिनियम, 1961(1961 का 43वां) की धारा 10 के खण्ड (23सी) की उप-धारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मुख्य आयकर आयुक्त, जयपुर एतदद्वारा निर्धारण वर्ष 2013-14 एवं आगे के लिये कथित धारा के उद्देश्य से सुभाष बाल विद्यालय समिति, गजसिंगपुरा, जयपुर को स्वीकृति देते हैं ।

2. बशर्ते कि समिति आयकर नियम, 1962 के नियम 2सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23सी) की उप-धारा (vi) के प्रावधानों के अनुरूप कार्य करें ।

[क्रमांक:मुआआ/अआआ/(मु)/जय/10(23सी)(vi)/2013-14/7093]

अतुलेश जिंदल, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX

Jaipur, the 28th January, 2014

(No. 12/2013-14)

S.O. 526.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961(43 of 1961) read with rule 2CA of the Income -tax Rules 1962, the Chief Commissioner of Income-tax, Jaipur hereby approves "M/s. Subhash Bal Vidhyalaya Samiti, Gajsinghpura Jaipur" for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/ITO/(Tech.)/10(23C)(vi)/2013-14/7093]

ATULESH JINDAL, Chief Commissioner of Income Tax

जयपुर, 30 जनवरी, 2014

(सं. 13/2013-14)

का.आ. 527.—आयकर नियम, 1962 के नियम 2सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23सी) की उप-धारा (via) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मुख्य आयकर आयुक्त, जयपुर एतद्द्वारा निर्धारण वर्ष 2013-14 एवं आगे के लिये कथित धारा के उद्देश्य से जयपुर केलगिरी ऑइ हॉस्पिटल एंड रिसर्च सेंटर, ट्रस्ट, जयपुर को स्वीकृति देते हैं ।

2. बशर्ते कि समिति आयकर नियम, 1962 के नियम 2सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23सी) की उप-धारा (via) के प्रावधानों के अनुरूप कार्य करें ।

[क्रमांक:मुआआ/अआआ/(मु)/जय/10(23सी)(vi)/2013-14/7129]

अतुलेश जिंदल, मुख्य आयकर आयुक्त

Jaipur, the 28th January, 2014

(No. 13/2013-14)

S.O. 527.—In exercise of the powers conferred by sub-clause (via) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules 1962, the Chief Commissioner of Income-tax, Jaipur hereby approves "M/s. Jaipur Calgary Charitable Eye Hospital & Research Centre Trust, Jaipur" for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of sub-clause (via) of clause (23C) of section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/ITO/(Tech.)/10(23C)(vi)/2013-14/7129]

ATULESH JINDAL, Chief Commissioner of Income Tax

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 23 जनवरी, 2014

का.आ. 528.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि, वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शिर्षक	भामा सं/भाग/खण्ड/ वर्ष
(1)	(2)	(3)	(4)	(5)	(6)
1.	2806155	7-10-2013	विहान इलेक्ट्रीकल्स मानव 5, गांवदेवी मंदिर के पीछे, साई सर्विस के सामने, सातीवली गॉव, वसई -पूर्व जिला : ठाणे- 401 208	250 वोल्टता और 16 एम्पीअर्स तक रेटित धारा के प्लग्स और सॉकेट -	भा मा 1293 : 2005
2.	2806256	7-10-2013	विहान इलेक्ट्रीकल्स मानव 5, गांवदेवी मंदिर के पीछे, साई सर्विस के सामने, सातीवली गॉव, वसई -पूर्व जिला : ठाणे- 401 208	घरेलु और समान प्रयोजनों के लिए स्विचे	भा मा 3854 : 1997
3.	2806761	10-10-2013	भूवाल इन्सुलेशन केबल प्रा. लि. गला सं. और 5, बिल्डिंग सं. 2, अंकित इण्डस्ट्रीयल इस्टेट, एन एच सं. 8, सातीवली रोड, वसई-पूर्व, ठाणे- 401 208	1100वो तक कार्यकारी वोल्टता के लिए इलेस्टोमर रोधित केबल	भा मा 9968 (भाग-1) 1988
4.	2809565	17-10-2013	प्रिसीजन इन्स्ट्रूमेंट 124 ए टू जेड इण्ड इस्टेट, जी के मार्ग, लोअर परेल, मुंबई- 400 013	एक्सप्लोसिव ऐटमॅस्फिअर्स - भाग-1 फलेमप्रूफ इनक्लोजर 'डी' द्वारा उपस्कर संरक्षा	भा मा/आयईसी 60079 : भाग-1 2007
5.	2813253	21-10-2013	सरस्वती वायर एण्ड केबल इण्डस्ट्रीज प्लॉट सं. सी-1, एसएल सं. 47/2, वेवूर गांव, पोस्ट मनोर रोड, पालधर, पूर्व, जिला : ठाणे- 401 404	पी वी सी रोधित (भारी डयूटी) विद्युत केबल : भाग 1, 1100 वोल्ट कार्यकारी वोल्टता तक व सहित के लिए	भा मा 1554 (भाग-1) 1988
6.	2818162	1-11-2013	जूस इलेक्ट्रीकल्स प्रा. लिमिटेड यूनिट सं. 1-4, लक्ष्मी एण्ड इस्टेट, प्लॉट सं. 7, हिस्सा सं. 1, सर्वे सं.77, वालीव गांव, सातीवली रोड, वसई -पूर्व, जिला : ठाणे- 401208	250 वोल्टता और 16 एम्पीअर्स तक रेटित धारा के प्लग्स और सॉकेट -	भा मा 1293 : 2005

(1)	(2)	(3)	(4)	(5)	(6)
7.	2818263	1-11-2013	जूस इलेक्ट्रीकल्स प्रा. लिमिटेड यूनिट सं. 1-4, लक्ष्मी एण्ड इस्टेट, प्लॉट सं. 7, हिस्सा सं. 1, सर्वे सं.77, वालीव गॉव, सातीवली रोड, वसई -पूर्व जिला : ठाणे- 401208	घरेलु और समान प्रयोजनों के लिए स्विचे	भा मा 3854 : 1997
8.	2818566	1-11-2013	ऑर्बिट इण्डस्ट्रीज 164/1311, मोतीलाल नगर सं.1 गोरे गॉव (पश्चिम) मुंबई - 400 104	घरेलु और समान प्रयोजनों के लिए स्विचे	भा मा 3854 : 1997
9.	2818667	1-11-2013	ऑर्बिट इण्डस्ट्रीज 164/1311, मोतीलाल नगर सं.1 गोरे गॉव (पश्चिम) मुंबई - 400 104	250 वोल्टता और 16 एम्पीअर्स तक रेटित धारा के प्लग्स और सॉकेट -	भा मा 1293 : 2005
10.	2818867	4-11-2013	सविता ऑयल टेक्नोलॉजिज लि. प्लॉट सं. 140/1, कुवापाडा गॉव, गॉव सिल्ली, पोस्ट किलवानी, दादरा और नगर हवेली सिलवासा - 396230	नया विद्युतरोधी तेल	भा मा 335 : 1993
11.	2817968	4-11-2013	सविता ऑयल टेक्नोलॉजिज लि. प्लॉट सं. 140/1, कुवापाडा गॉव, गॉव सिल्ली, पोस्ट किलवानी, दादरा और नगर हवेली सिलवासा - 396230	संदमित मिनरल विद्युतरोधी तेल	भा मा 12463 : 1988
12.	28268767	28-11-2013	अपार इण्डस्ट्रीज लि. सर्वे सं. 127/1/2, अथोला गॉव, थ्सलवासा उमर कुई रोड, दादरा और नगर हवेली सिलवासा - 396230	शिरोपरि प्रेषण प्रयोजनों के लिए एल्यूमिनियम चालक -भाग -4, एल्यूमिनियम मिश्रधातु के लडदार चालक, (एल्यूमिनियम मैग्नीश्यिम सिलीकॉन टाईप)	भा मा 398 भाग 4 1996
13.	2826868	28-11-2013	अपार इण्डस्ट्रीज लि. सर्वे सं. 127/1/2, अथोला गॉव, थ्सलवासा उमर कुई रोड, दादरा और नगर हवेली सिलवासा - 396230	शिरोपरि प्रेषण प्रयोजनों के लिए एल्यूमिनियम चालक -भाग -5, एल्यूमिनियम चालक अतिरिक्त उच्च वोल्टता (400 केवी और अधिक) के लिए जस्तीकृत इस्पात प्रबलित	भा मा 398 भाग 5 1992
14.	2826969	28-11-2013	अपार इण्डस्ट्रीज लि. सर्वे सं. 127/1/2, अथोला गॉव, थ्सलवासा उमर कुई रोड, दादरा और नगर हवेली सिलवासा - 396230	शिरोपरि प्रेषण प्रयोजनों के लिए एल्यूमिनियम चालक -भाग -2, एलयूमिनियम चालक जस्तीकृत इस्पात प्रबलित	भा मा 398 भाग 2 1996
15.	2827062	28-11-2013	अपार इण्डस्ट्रीज लि. सर्वे सं. 127/1/2, अथोला गॉव, थ्सलवासा उमर कुई रोड़, दादरा और नगर हवेली सिलवासा - 396230	शिरोपरि प्रेषण प्रयोजनों के लिए एल्यूमिनियम चालक -भाग -1, एल्यूमिनियम लडदार चालक	भा मा 398 भाग 1 1992

(1)	(2)	(3)	(4)	(5)	(6)
16.	2827668	28-11-2013	प्रिज्म इण्डस्ट्रीज बिल्डिंग सं. बी, प्लॉट 770, महारानी उदयोग इस्टेट, सोमनाथ रोड, दमन, दमन एवं दीव - 396 210	घरेलु और समान प्रयोजनों के लिए स्विचे	भा मा 3854 : 1997
17.	2831760	02-12-2013	फ्लेम एण्ड एक्सप्लोजन प्रूफ इक्यूपमेंन्ट मैन्यूफैक्चरिंग कं. गला सं.1, पाटिल इस्टेट, रोड सं. 28 रामनगर, शिवसेना शाखा के सामने, वागले इस्टेट, जिला : ठाणे - 400 604	एक्सप्लोसिव ऐटमॅस्फिअर्स - भाग-1 फलेमप्रूफ इनक्लोजर 'डी' द्वारा उपस्कर संरक्षा	भा मा/आयईसी 60079: भाग-1 2007

[सं. के. प्र. वि./13 : 11]

एन. सिंह, प्रमुख (एमयूबीओ - ईईई)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 23rd January, 2014

S.O. 528.—In pursuance of sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (factory) of the Party	Product	IS No./Part/Sec./Year
(1)	(2)	(3)	(4)	(5)	(6)
1.	2806155	7-10-2013	Vihan Electricals Manav 5, Behind Gamdevi Mandir, Opp Sai Service, Sativali Village Vasai- East, Distt : Thane - 401208	Plugs and socket outlets of 250 volts and rated current up to 16 amperes	IS 1293 : 2005
2.	2806256	7-10-2013	Vihan Electricals Manav 5, Behind Gamdevi Mandir, Opp Sai Service, Sativali Village Vasai- East Distt : Thane - 401208	Switches for domestic and similar purposes	IS 3854 : 1997
3.	2806761	10-10-2013	Bhuwal Insulation Cable Pvt. Ltd. Gala No. 4 & 5, BLDG. No. 2 Ankit Ind. Estate, Near M L K Indl. Estate, N H No. 8, Sativali Road, Vasai- East Distt : Thane - 401208	Elastomer Insulated Cables Part 1 for working voltages upto and Including 1100 V	IS 9968 : Part 1 : 1988

(1)	(2)	(3)	(4)	(5)	(6)
4.	2809565	17-10-2013	Precision Instrument Co. 124, A to Z Indl. Estate, G K Marg, Lower Parel, Mumbai - 40013	Explosive Atmospheres - Part 1 : Equipment Protection by Flameproof Enclosures "d"	IS/IEC 60079 : Part 1 : 2007
5.	2813253	21-10-2013	Saraswati Wires & Cables Industries Plot No. C-1, SL No. 47/2, Vevoor Village, Post Manor Road, Palghar (E) Distt : Thane - 401404	PVC Insulated (Heavy Duty) Electric Cables Part 1 for working Voltages upto and Including 1100V	IS 1554 : Part 1 : 1988
6.	2818162	1-11-2013	Juice Electricals Pvt. Ltd. Unit No. 1-4, Laxmi Indl. Estate, Plot No.7, Hisa No.1, Survey No.77, Village Valiv, Sativali Road, Vasai (East) Distt: Thane -401208	Plugs and socket outles of 250 volts and rated current up to 16 amperes	IS 1293 : 2005
7.	2818263	1-11-2013	Juice Electricals Pvt. Ltd. Unit No. 1-4, Laxmi Indl. Estate, Plot No.7, Hisa No.1, Survey No.77, Village Valiv, Sativali Road, Vasai (East) Distt: Thane -401208	Switches for domestic and similar purposes	IS 3854 : 1997
8.	2818566	1-11-2013	Orbit Industries 164/1311, Motilal Nagar No.1 Goregaon (West), Mumbai - 400104	Switches for domestic and similar purposes	IS 3854 : 1997
9.	2818667	1-11-2013	Orbit Industries 164/1311, Motilal Nagar No.1 Goregaon (West), Mumbai - 400104	Plugs and socket outlets of 250 volts and rated current up to 16 amperes	IS 1293 : 2005
10.	2817867	4-11-2013	Savita Oil Technologies Ltd. Plot No.140/1, Kuvapada Village, Village Silli, Post Kilvani, Dadra and Nagar Haveli, Silvassa -396230	New insulating oils	IS 335 : 1993
11.	2817968	4-11-2013	Savita Oil Technologies Ltd. Plot No.140/1, Kuvapada Village, Village Silli, Post Kilvani, Dadra and Nagar Haveli, Silvassa -396230	Inhibited mineral insulating Oils	IS 12463 : 1988

(1)	(2)	(3)	(4)	(5)	(6)
12.	2826767	28-11-2013	Apar Inds. Ltd. Survey No.127/1/2, Village, Athola , Silvassa Umarkui Road, Silvassa, Distt : Dadra and Nagar Haveli. 396230	Aluminium conductors for overhead transmission purposes : Part 4 Aluminium alloy stranded conductors (aluminium magnesium silicon type)	IS 398 : Part 4 : 1988
13.	2826868	28-11-2013	Apar Inds. Ltd. Survey No.127/1/2, Village, Athola , Silvassa Umarkui Road, Silvassa, Distt : Dadra and Nagar Haveli- 396230	Aluminium conductors for overhead transmission purposes : Part 5 Aluminium conductors-galvanized steel reinforced for extra high voltage (400 kV and above)	IS 398 : Part 5 : 1992
14.	2826969	28-11-2013	Apar Inds. Ltd. Survey No.127/1/2, Village, Athola , Silvassa Umarkui Road, Silvassa Distt : Dadra and Nagar Haveli- 396230	Aluminium conductors for overhead transmission purposes : Part 2 Aluminium conductors galvanized steel reinforced	IS 398 : Part 2 : 1996
15.	2827062	28-11-2013	Apar Inds. Ltd. Survey No.127/1/2, Village, Athola , Silvassa Umarkui Road, Silvassa, Distt : Dadra and Nagar Haveli- 396230	Aluminium conductors for overhead transmission purposes : Part 1 Aluminium stranded conductors	IS 398 : Part 1 : 1996
16.	2827668	28-11-2013	Prism Industries Building No.B, Plot No. 770, Behind Maharani Udyog Estate, Somnath Road, Distt : Damann Daman & Diu - 396210	Switches for domestic and similar purposes	IS 3854 : 1997
17.	2831760	2-12-2013	Flame & Explosion Proof Equipment MFG. Co. Gala No. 1 Patil Estate, Road No. 28 Ramnagar Ramnagar. Opp. Shivsena Shakha, Wagle Estate, Distt: Thane - 400604	Explosive Atmospheres - Part 1 : Equipment Protection by Flameproof Enclosures "d"	IS/IEC 60079 : Part 1 : 2007

[No. CMD/13 : 11]

N. SINGH, Head (MUBO-EEE)

नई दिल्ली, 23 जनवरी, 2014

का.आ. 529.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उप-विनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए है, वे रद्द कर दिए गए हैं :–

अनुसूची

क्र. सं.	लाइसेंस संख्या	लाइसेंसधारी का नाम व पता	लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
1.	3694175	एस जी मार्केटिंग 4 शिव पार्वती सदन, पुष्पा सिल्क मिल के पास , एन एस डी रोड, गोविंद नगर मालाड पूर्व, मुंबई - 400097	भा मा 4250 : 1980 बिजली के घरेलू खाद्य मिक्सर (द्रवीपरक और ग्राइंडर)	11/11/2013
2.	3636173	कुबेर इण्डस्ट्रीज पहला माला, 31/244, मोती लाल नगर सं. 3, एम जी रोड, गोरेगॉव - पश्चिम मुंबई - 400062	भा मा 3854 : 1997 घरेलू और समान प्रयोजनों के लिए स्विचे	12/11/2013
3.	7003546	प्रेसिसीयन इलेक्ट्रीकल्स, गाला सं. 1, 3 एवं 4 चौधरी इण्डस्ट्रीयल इस्टेट, विलेज नवघर, वसई पूर्व, जिला ठाणे - 401202	भा मा 371 : 1999 सीलिंग रोज	11/11/2013

[सं. के. प्र. वि./13:13]

एन. सिंह, प्रमुख (एम यू बी ओ - ईईई)

New Delhi, the 23rd January, 2014

S.O. 529.—In pursuance of sub-regulation (6) of the Regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988 the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given in the following schedule have been cancelled with effect from the date indicated against each :—

SCHEDULE

Sl. No.	Licences No.	Name and Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence	Date of Cancellation
(1)	(2)	(3)	(4)	(5)
1	3694175	S. G. Marketing 4 Shiv Parvati Sadan, Near Pushapa Silk Mills, NSD Road, Govind Nagar, Malad-E Mumbai - 400097	IS 4250 : 1980 Domestic electric food-mixers (liquidizes and grinders)	11/11/2013
2	3936173	Kuber Industries 1st Floor, 31/244, Motilal Nagar, No. 3, M G Road, Goregaon West, Mumbai - 400062	IS 3854 : 1997 switches for domestic and similar purposes	12/11/2013

(1)	(2)	(3)	(4)	(5)
3	7003546	Precision Electrical Gala No. 1, 3 and 4 Choudhary Industrial Estate Village Navghar Vasai, Vasai (E) Distt :Thane Pin - 401202	IS 371 : 1999 Ceiling Roses	11/11/2013

[No. CMD/13:13]

N. SINGH, Head (MUBO-EEE)

नई दिल्ली, 30 जनवरी, 2014

का.आ. 530.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा. मा. संख्या	भाग	अनुभाग	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	2837166	21-12-2013	मेसर्स कुलकेर एग्रो प्रोड्क्टस गट नं. 972, वडगांव पाटोले तालुका खेड जिला पुणे महाराष्ट्र 412105	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004
2.	2838774	1-1-2014	मेसर्स गुरूप्रकाश एकवा प्लॉट नं. 14 हनुमान नगर जिला हिंगोली महाराष्ट्र 431513	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004
3.	2838875	31-12-2013	मेसर्स साई कृष्णा इंडस्ट्रीज गट नं. 14 ह. नं. 179 गडेगांव तालुक एवं जिला नांदेड महाराष्ट्र 431604	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004
4.	2839978	1-1-2014	मेसर्स एस के इंडस्ट्रीज गट नं. 2261 पोस्ट श्रीगोंदा तालुक श्रीगोंदा जिला अहमदनगर महाराष्ट्र 413701	पूर्वढलित कंक्रीट पाइप (प्रबलन सहित और रहित)- विशिष्टि	458	-	-	2003

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
5.	2818768	7-1-2014	मेसर्स बालाजी इंडस्ट्रीज प्लॉट नं. डी-169 एमआयडीसी शेंद्रा जिला औरंगाबाद महाराष्ट्र 431001	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004
6.	2842967	16-1-2014	मेसर्स हषवर्धन फूड्स एंड बेवरेजज स.. नं. 147/ए/5 मांजरी (बीके) हवेली जिला पुणे महाराष्ट्र 411307	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004
7.	2843868	18-1-2014	मेसर्स बालाजी इंडस्ट्रीज प्लॉट नं. डब्ल्यू-9 एमआयडीसी एरिया जिला परभणी महाराष्ट्र 431401	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004
8.	2844567	17-1-2014	मेसर्स टोपास टाइल्स गट नं. 967 सनसवाडी शिरूर जिला पुणे महाराष्ट्र	पूर्वढलित कंक्रीट केबल कवस	5820	-	-	1970
9.	2844668	20-1-2014	मेसर्स सुप्रभा प्रोटेकटिव प्रॉडक्ट्स प्रा. लि. यूनिट नं. 2 स नं. 584 हिस्सा नं. 5 एट/पी सासवड तालुका पुरंदर जिला पुणे, महाराष्ट्र- 412301	वस्त्रादि -उच्च घनत्व पोलीइथलीन बुने कनडे से बने तिरपाल-विशिष्टि	7903	-	-	2011
10.	2845266	22-1-2014	मेसर्स जयहिंद फूड एंड बेवरेजेज गट नं 47/2सी/2/1 गावडेवाडी पोस्ट कांदलगांव तालुका साउत सोलापूर जिला सोलापूर, महाराष्ट्र- 431221	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
11.	2845569	23-1-2014	मेसर्स अजय इंडस्ट्रियल कॉर्पोरेशन लि. गट नं. 381, 382 ए/पी विंग तालुका खंडाला जिला सातारा, महाराष्ट्र- 412801	संवातन और वर्षा जल-संग्रहण के तंत्र सहित भवनों के अन्दर व बाहर की मिट्टी तथा अपशिष्ट निरावेशन तंत्र के लिए अनम्यकृत पोलीविनाइल क्लोराइड (पीवीसी-यु) पाइपें - विशिष्ट	13592	-	-	1992

[सं. सी.एम.डी./13:11]

बी. एम. हनीफ, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 30th January, 2014

S.O. 530.—In pursuance of sub-regulation (5) of the Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	Licences No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	2837166	21-12-2013	M/s. Coolcare Agro Products Gat No. 972 Vadgaon Patole Taluka Khed District Pune, Maharashtra- 412105	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
2.	2838774	1-1-2014	M/s. Guruprakash Aqua Plot No. 14 Hanuman Nagar District Hingoli, Maharashtra- 431513	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
3.	2838875	31-12-2013	M/s. Sai Krushna Industries Gut No. 129 H. No.179 Gadegaon Taluka & District Nanded Maharashtra- 431604	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
4.	2839978	1-1-2014	M/s. S. K. Enterprises Gat No. 2261 Post Shrigonda Taluka Shrigonda District Ahmednagar, Maharashtra- 413701	Precast concrete pipes (with and without reinforcement)	458	-	-	2003
5.	2818768	7-1-2014	M/s. Balaji Industries Plot No. D-169 MIDC Shendra District Aurangabad, Maharashtra 431001	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
6.	2842967	16-1-2014	M/s. Harshwardhan Foods & Beverages S. No. 147 A/5 Manjari (BK) Haveli District Pune, Maharashtra- 411307	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
7.	2843868	18-1-2014	M/s. Balaji Industries Plot No. W-9 MIDC Area District Parbhani, Maharashtra- 431401	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
8.	2844567	17-1-2014	M/s. Topaz Tiles Get No. 967 Sanaswadi Shirur District Pune, Maharashtra	Precast concrete cable cover	5820	-	-	1970
9.	2844668	20-1-2014	M/s. Suprabha Protective Products Pvt. Ltd. Unit No. 2 S. No. 584, Hissa No. 5 A/P Saswad Taluka Purandhar District Pune, Maharashtra- 412301	Textiles -Tarpaulins made from high density polyethylene woven fabric	7903	-	-	2011

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
10.	2845266	22-1-2014	M/s. Jaihind Food & Beverages Gat No. 47/2C/2/1 Gavdewadi Post Kandalgaon Taluka South Solapur District Solapur, Maharashtra- 413221	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
11.	2845569	23-1-2014	M/s. Ajay Industrial Corporation Ltd. Gat No. 381, 382 A/P Wing Taluka Khandala District Satara, Maharashtra- 412801	Unplasticized PVC pipes for soil and waste discharge system for inside and outside buildings including ventilation and rainwater system	13592	-	-	1992

[No. CMD/13:11]

B. M. HANEEF, Scientist 'F' and Head

नई दिल्ली, 30 जनवरी, 2014

का.आ. 531.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उप-विनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :–

अनुसूची

क्र. सं.	लाइसेंस संख्या सीएम/एल-	लाइसेंसधारी का नाम व पता	लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
		निल		

[सं. सी एम डी/13:13]

बी. एम. हनीफ, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 30th January, 2014

S.O. 531.—In pursuance of sub-regulation (6) of the Regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988 of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each :—

SCHEDULE

Sl. No.	Licences No. CM/L.	Name and Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
(1)	(2)	(3)	(4)	(5)
		NIL		

[No. CMD/13:13]

B. M. HANEEF, Scientist 'F' and Head

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 27 जनवरी, 2014

का.आ. 532.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में कृषि मंत्रालय, कृषि एवं सहकारिता विभाग के सम्बद्ध कार्यालय वनस्पति संरक्षण, संगरोध एवं संग्रह निदेशालय, फरीदाबाद के अंतर्गत निम्नलिखित प्रशासनिक नियंत्रणाधीन कार्यालय को जिसके 80% कर्मचारी वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

क्षेत्रीय वनस्पति संगरोध केन्द्र,
जी.एस.टी. रोड, निकट ट्रिडेन्ट होटल,
मीनम्बाक्कम,
चेन्नई-600027 (तमिलनाडु)

[सं. 3-3/2011-रा.भा.नी.]

आर. बी. सिन्हा, संयुक्त सचिव

MINISTRY OF AGRICULTURE

(Department of Agriculture and Cooperation)

(Official Language Divsion)

New Delhi, the 27th January, 2014

S.O. 532.— In pursuance of Sub Rule (4) of the Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976 the Central Government hereby notifies the following office which is under the administrative control of the Directorate of Plant Protection, Quarantine & Storage, Faridabad an attached office of the Department of the Agriculture & Cooperation, Ministry of Agriculture, wherof 80% staff have acquired the working knowledge of Hindi :—

Regional Plant Quarantine Station,
G.. S. T. Road, Near Trident Hotel
Meenambakkam,
Chennai- 600027 (T.N.)

[No. 3-3/2011-Official Language Policy]

R.B. SINHA, Jt. Secy.

(कृषि अनुसंधान एवं शिक्षा विभाग)

नई दिल्ली, 27 जनवरी, 2014

का.आ. 533.—केन्द्रीय सरकार, कृषि मंत्रालय, कृषि अनुसंधान एवं शिक्षा विभाग राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली, 1976 के नियम 10 के उप-नियम(4) के अनुसरण में भा.कृ.अ.प. के अधीनस्थ भारतीय कृषि अनुसांधन परिषद्, एला, ओल्ड गोवा को जिसके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है ।

[सं. 13-10/2009-हिन्दी]

रेखा आनन्द, अवर सचिव

(Department of Agriculture Research and Education)

New Delhi, the 27th January, 2014

S.O. 533.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government, Ministry of Agriculture, Department of Agricultural Research & Education hereby notifies the Indian Council of Agricultural Research (ICAR), Ela, Old Goa where more than 80% of staff have acquired the working knowledge of Hindi.

[No. 13-10/2009-Hindi]

REKHA ANAND, Under Secy.

नई दिल्ली, 31 जनवरी, 2014

का.आ. 534.—केन्द्रीय सरकार, कृषि मंत्रालय, कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में भा.कृ.अ.प. के केन्द्रीय मात्स्यिकी शिक्षा संस्थान काकिनाड़ा केन्द्र, काकिनाड़ा, आन्ध्र प्रदेश को जिसके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यासाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है ।

[सं. 13-10/2009-हिन्दी/25-51]

रेखा आनन्द, अवर सचिव

New Delhi, the 31st January, 2014

S.O. 534.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government, Ministry of Agriculture, Department of Agricultural Research & Education hereby notifies the Central Institute of Fisheries Education Kakinada Centre, Kakinaka, Andhra Pradesh where more than 80% of staff have acquired the working knowledge of Hindi.

[No.13-10/2009-Hindi/25-51]

REKHA ANAND, Under Secy.

नई दिल्ली, 31 जनवरी, 2014

का.आ. 535.—केन्द्रीय सरकार, कृषि मंत्रालय, कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में भा.कृ.अ.प. के केन्द्रीय मात्स्यिकी शिक्षा संस्थान काकिनाड़ा केन्द्र, काकिनाड़ा, आन्ध्र प्रदेश को जिसके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यासाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है ।

[सं. 13-10/2009-हिन्दी/25-51]

रेखा आनन्द, अवर सचिव

New Delhi, the 31st January, 2014

S.O. 535.— In pursuance of Sub Rule (4) of Rule 10 of the Official Language (use for Official Purposes of the Union) Rules, 1976, the Central Government, Ministry of Agriculture, Department of Agricultural Research & Education hereby notifies the Central Institute of Fisheries Education Kakinada Centre, Kakinaka, Andhra Pradesh where more than 80% of staff have acquired the working knowledge of Hindi.

[No.13-10/2009-Hindi/25-51]

REKHA ANAND, Under Secy.

नई दिल्ली, 27 जनवरी, 2014

का.आ. 536.— केन्द्रीय सरकार, कृषि मंत्रालय, कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में भा.कृ.अ.प. के अधीनस्थ भारतीय कृषि अनुसांधन परिषद्, एला, ओल्ड गोवा को जिसके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है ।

[सं. 13-10/2009-हिन्दी]

रेखा आनन्द, अवर सचिव

New Delhi, the 27th January, 2014

S.O. 536.— In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (use for Official Purpose of the Union) Rules, 1976, the Central Government, Ministry of Agriculture, Department of Agricultural Research & Education hereby notifies the Indian Council of Agricultural Research (ICAR), Ela, Old Goa where more than 80% of staff have acquired the working knowledge of Hindi.

[No.13-10/2009-Hindi]

REKHA ANAND, Under Secy.

कोयला मंत्रालय

आदेश

नई दिल्ली, 4 फरवरी, 2014

का.आ. 537.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii), तारीख 01 मार्च, 2013 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्याक का.आ. 499(अ), तारीख 28 फरवरी, 2013 के प्रकाशन पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) में और उस पर के सतही अधिकार, उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए हैं;

और केन्द्रीय सरकार का यह समाधान हो गया है कि सेंट्रल कोलफील्ड्स लिमिटेड, राँची (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे अनुपालन करने के लिए रजामंद है;

अत: अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में और उस पर के इस प्रकार निहित सतही अधिकार तारीख 1 मार्च, 2013 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात्

(1) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत् किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

(2) शर्त (1) के अधीन सरकारी कंपनी द्वारा, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में और उस पर के सतही अधिकारों के लिए और उनके संबंध में अपील, आदि, सभी विधिक कार्यवाहियों की बाबत् उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के सतही अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

(4) सरकारी कंपनी के पास केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि में और उस पर के इस प्रकार निहित सतही अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निर्देशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं ।

[फा. सं. 43015/19/2009-पीआरआईडब्ल्यू-1]

दोमिनिक डुंगडुंग, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 4th February, 2014

S.O. 537.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 449(E), dated the 28th February, 2013, in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 1st March, 2013, issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the Surface rights in and or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act;

And whereas, the Central Government is satisfied that the Central Coalfields Limited, Ranchi (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf,

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the said Act, the Central Government hereby directs that the surface rights in and over the said land so vested shall, with effect from 1st March, 2013 instead of continuing to so vest in the Central Government, vest in the Government Company, subject to the following terms and conditions, namely:—

(i) the Government Company shall reimburse the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;

(ii) a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government Company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the said Tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the surface rights, in and over the said land, so vested, shall also be borne by the Government Company;

(iii) the Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government and its officials regarding the surface rights in or over the said land so vested;

(iv) the Government Company shall have no power to transfer the surface rights in and over the said land so vested, to any other person without the prior approval of the Central Government; and

(v) the Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land, as and when necessary.

[F. No. 43015/19/2009-PRIW-I]

DOMINIC DUNGDUNG, Under Secy.

नई दिल्ली, 4 फरवरी, 2014

का.आ. 538.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में वर्णित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त किए जाने की संभावना है।

और उक्त अनुसूची में वर्णित भूमि के अंतर्गत आने वाले क्षेत्र के ब्यौरे रेखांक संख्याक सी-1 (ई)III/एचआर/894-0713, तारीख 13 जुलाई, 2013 का निरीक्षण , वेस्टर्न कोलफील्डस लिमिटेड, (राजस्व विभाग), कोल इस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) के कार्यालय में या मुख्य महाप्रबंधक (एक्सप्लोरेशन प्रभाग), केन्द्रीय खान योजना एवं डिजाइन संस्थान, गोंडवाना पॅलेस, कांके रोड रांची-834001 के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता-700 001 के कार्यालय में या जिला कलक्टर, छिंदवाड़ा (मध्य प्रदेश) के कार्यालय में किया जा सकता है;

अत:, अब, केन्द्रीय सरकार कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है;

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर क्षेत्रीय महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, कन्हान क्षेत्र, पोस्ट ऑफिस, डुंगिरया, तहसील जुन्नारदेव, जिला छिंदवाड़ा (मध्य प्रदेश) या महा प्रबंधक (भूमि और राजस्व), वेस्टर्न कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, कोल इस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) के कार्यालय से, -

(i) उक्त अधिसूचना की धारा 4 की उप-धारा(3) के अधीन की गई किसी कार्रवाई से हुई या होने वाली संभावित किसी नुकसान के लिए अधिनियम की धारा 6 के अधीन प्रतिकर का दावा कर सकेगा ;

(ii) उक्त अधिनियम की धारा (13) की उप-धारा (1) के अधीन पूर्वेक्षण अनुज्ञप्तियों के प्रभावहीन होने के संबंध मे या उक्त अधिनियम की धारा 13 की उप-धारा (4) अधीन खनन पट्टे प्रभावहीन होने के लिए प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनियम की धारा (13) की उप-धारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों की बाबत उपगत व्यय को उपदर्शित करने के लिए पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा ।

अनुसूची

धाउ एक्सटेंशन ब्लॉक

कन्हान क्षेत्र

जिला छिन्दवाड़ा (मध्य प्रदेश)

[रेखांक सं. सी.- I(ई)III/ एचआर/894-0713, तारीख 13 जुलाई, 2013]

क्र सं.	ग्राम का नाम	तहसील	जिला	क्षेत्र (हेक्टर में) राजस्व	वन कम्पार्टमेंट संख्या		कुल (हेक्टर में)
1	मुरेखुराई	जुन्नारदेव	छिन्दवाड़ा	124.12	पी. एफ. कम्पार्टमेंट सं. 00394	2.95	
					पी. एफ. कम्पार्टमेंट सं. 00395	4.19	
					पी. एफ. कम्पार्टमेंट सं. 00406	205.43	
					पी. एफ. कम्पार्टमेंट सं. 00408	0.50	
					पी. एफ. कम्पार्टमेंट सं. 00407	208.57	
					पी. एफ. कम्पार्टमेंट सं. 00444	31.75	
					पी. एफ. कम्पार्टमेंट सं. 00443	7.68	
				124.12	-	461.07	585.19
2	भाली धाम	जुन्नारदेव	छिन्दवाड़ा	51.72	पी. एफ. कम्पार्टमेंट सं. 00444	169.56	
					पी. एफ. कम्पार्टमेंट सं. 00443	3.06	
					पी. एफ. कम्पार्टमेंट सं. 00445	76.71	
				51.72	-	249.33	301.05
3	चन्दीया कुसूमपथ	जुन्नारदेव	छिन्दवाड़ा	53.03	पी. एफ. कम्पार्टमेंट सं. 00445	49.72	102.75
4	चिकतबरी	जुन्नारदेव	छिन्दवाड़ा	शून्य	पी. एफ. कम्पार्टमेंट सं. 00441	0.53	0.53
5	चन्दानिया कोयलावारी	जुन्नारदेव	छिन्दवाड़ा	23.27	पी. एफ. कम्पार्टमेंट सं. 00407	47.07	
					पी. एफ. कम्पार्टमेंट सं. 00417	91.34	
					पी. एफ. कम्पार्टमेंट सं. 00443	4.69	
					पी. एफ. कम्पार्टमेंट सं. 00442	0.60	
				23.27	-	143.70	166.97
6	धाउ	जुन्नारदेव	छिन्दवाड़ा	424.63	पी. एफ. कम्पार्टमेंट सं. 00445	92.35	
					पी. एफ. कम्पार्टमेंट सं. 00444	26.58	
					पी. एफ. कम्पार्टमेंट सं. 00443	243.41	
					पी. एफ. कम्पार्टमेंट सं. 00407	3.68	
					पी. एफ. कम्पार्टमेंट सं. 00417	4.77	
					पी. एफ. कम्पार्टमेंट सं. 00442	45.13	
					पी. एफ. कम्पार्टमेंट सं. 00441	122.52	
				424.63	-	538.44	963.07
			कुल:	**676.77**	-	**1442.79**	**2119.56**

कुल क्षेत्र: 2119.56 हेक्टर (लगभग) या 5237.43 एकड़ (लगभग)

सीमा वर्णन

क-ख-ग-घ : रेखा ग्राम मुरे खुराई की ग्राम सीमा पर बिन्दु 'क' से आरंभ होती है फिर ग्राम मुरे खुराई से होकर बिन्दु 'ख', बिन्दु 'ग' से होकर गुजरती है फिर ग्राम मुरे खुराई और ग्राम चन्दीया कोयलावारी को सम्मिलित ग्राम सीमा को पार करती है और ग्राम चन्दीया कोयलावारी में बिन्दु 'घ' पर मिलती है।

घ-ङ-च-छ-ज-झ : रेखा ग्राम चन्दीया कोयलावारी से होकर गुजरती है फिर ग्राम चन्दीया कोयलावारी और ग्राम धाउ की सम्मिलित ग्राम सीमा को पार करती है फिर रेखा ग्राम धाउ में बिन्दु 'ड' बिन्दु 'च' बिन्द 'छ' बिन्द 'ज' से होकर गुजराती है फिर रेखा ग्राम धाउ और ग्राम चिकतबरी की सम्मिलित ग्राम सीमा को पार करती है और ग्राम चिकतबरी में बिन्दु 'झ' पर मिलती है ।

झ-ञ-ट : रेखा ग्राम चिकतबरी से होकर गुजरती है फिर ग्राम चिकतबरी और ग्राम धाउ की सम्मिलित ग्राम सीमा को पार करती है फिर रेखा ग्राम धाउ में बिन्दु 'ञ' से होकर गुजरती है और ग्राम धाउ और ग्राम चन्दानिया कुसूमपथ की सम्मिलित ग्राम सीमा पर बिन्दु 'ट' पर मिलती है।

ट-ठ-ड-ढ-क : रेखा ग्राम चन्दीया कुसूमपथ में बिन्दु 'ठ' बिन्दु 'ड' रेखा बिन्दु 'ढ' से होकर गुजराती है फिर ग्राम चन्दानिया कुसूमपथ और ग्राम भाली धाम की सम्मिलित ग्राम सीमा को पार करती है फिर रेखा ग्राम भाली धाम से होकर गुजरती है और ग्राम भाली धाम और ग्राम मुरेखुराइ की सम्मिलित ग्राम सीमा को पार करती है और आरंभिक बिन्दु 'क' पर मिलती है ।

[फा. सं. 43015/10/2013 -पीआरआईडब्ल्यू-1]

दोमिनिक डुंगडुंग, अवर सचिव

New Delhi, the 4th February, 2014

S.O. 538.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the land in the locality described in the Schedule annexed hereto;

And Whereas, the plan bearing number C-1 (E)III/HR/894-0713, dated the 13th July, 2013 containing the area of land described in the said Schedule may be inspected at the office of the Western Coalfields Limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) or at the office of the Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Palace, Kanke Road, Ranchi -834 001 or at the office of the Coal Controller, 1, Council House Street, Kolkata - 700 001 or at the office of the District Collector, Chhindwara (Madhya Pradesh);

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in the land described in the aforesaid Schedule;

Any person interested in the land described in the aforesaid Schedule may-

(i) claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of Section 4 thereof; or

(ii) claim compensation under sub-section (1) of Section 13 of the said Act in respect of prospecting license ceasing to have effect or under sub-section (4) of Section 13 of the said Act for mining lease ceasing to have effect and deliver all maps" charts and other documents relating to the aforesaid rand. to show the expenditureincurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of Section 13 of the said Act,

to the Office of the Area General Manager, Western Coalfields Limited, Kanhan Area, Post Office Dungaria, Tahsil Junnardeo, District Chhindwara (Madhya Pradesh) or General Manager (Land and Revenue), Western Coalfields Limited, Land and Revenue Department, Coal Estate, Civil Lines, Nagpur - 440 001 (Maharashtra) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

DHAU EXTENSION BLOCK

KANHAN AREA

DISTRICT CHHINDWARA (MADHYA PRADESH)

[Plan bearing number C-1(E)III/HR/894- 0713, dated 13th July, 2013]

Sl. No.	Name of Village	Tahsil	District	Land (in hectares)			Total (in hectares)
				Revenue Forest Compartment number			
1	Murre Khurai	Junnar-deo	Chhind-wara	124.12	P.F. COMPT. NO. 00394	2.95	
					P.F. COMPT. NO. 00395	4.19	
					P.F. COMPT.NO. 00406	205.43	
					P.F. COMPT. NO. 00408	0.50	
					P.F. COMPT. NO. 00407	208.57	
					P.F. COMPT. NO. 00444	31.75	
					P.F. COMPT. NO. 00443	7.68	
				124.12	-	461.07	585.19
2	Bhali Dham	Junnar-deo	Chhind-wara	51.72	P.F. COMPT. NO. 00444	169.56	
					P.F. COMPT. NO. 00443	3.06	
					P.F. COMPT. NO. 00445	76.71	
				51.72	-	249.33	301.05
3	Chand-aniya Kusum-path	Junnar-deo	Chhind-wara "	53.03	P.F. COMPT. NO. 00445	49.72	102.75
4	Chikat-bari	Junnar-deo	Chhind-wara	Nil	P.F. COMPT. NO. 00441	0.53	0.53
5	Chandia Koyala-wari	Junnar-deo	Chhind-wara	23.27	P.F. COMPT. NO. 00407	47.07	
					P.F. COMPT. NO. 00417	91.34	
					P.F. COMPT. NO. 00443	4.69	
					P.F. COMPT. NO. 00442	0.60	
				23.27	-	143.70	166.97
6	Dhau	Junnar-deo	Chhind-wara	424.63	P.F. COMPT. NO. 00445	92.35	
					P.F. COMPT. NO. 00444	26.58	
					P.F. COMPT. NO. 00443	243.41	
					P.F. COMPT. NO. 00407	3.68	
					P.F. COMPT. NO. 00417	4.77	
					P.F. COMPT. NO. 00442	45.13	
					P.F. COMPT. NO. 00441	122.52	
				424.63	-	538.44	963.07
Total:				**676.77**	**-**	**1442.79**	**2119.56**

Total area: 2119.56 hectares (approximately) or 5237.43 acres (approximately).

Boundary description:

A-B-C-D : Line starts from Point 'A' in village boundary of Murre Khurai, then line passes nearby Point 'B', 'C' through village Murre Khurai, then crosses common village boundary of villages Murre Khurai and Chandia Koyalawari and meets at Point 'D' in village Chandia Kcyalawari. '

D-E-F-G-H-I : Line passes through village Chandia Koyalawari, then crosses common village boundary of villages Chandia Koyalawari and Dhau, then line passes nearby Point 'E', 'F', 'G', 'H' through village Dhau, then line crosses common village boundary of villages Dhau and Chikatbari and meets at Point 'I' in village Chikatbari.

I-J - K : Line passes through village Chikatbari then crosses common village boundary of villages Chikatbari and Dhau, then line passes nearby Point 'J' through village Dhau and meets at Point 'K' on common village boundary of villages Dhau and Chandaniya Kusumpath.

K-L-M-N-A : Line passes nearby Point 'L', 'M', 'N' through village Chandaniya Kusumpath then line crosses common village boundary of villages Chandaniya Kusumpath and Bhali Dham then line passes through village Bhali Dham and crosses common village boundary of villages Bhali Dham and Murre Khurai and meets at starting Point 'A'.

[F. No. 43015/10/2013-PRIW-I]
DOMINIC DUNGDUNG, Under Secy.

आदेश

नई दिल्ली, 4 फरवरी, 2014

का.आ. 539.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय के कोयला मंत्रालय की अधिसूचना संख्याक का.आ. 3241(अ) , तारीख 19 अक्तूबर, 2012 भारत के राजपत्र, भाग II, खंड 3, उप-खंड (ii) , तारीख 27 अक्तूबर, 2012 में प्रकाशित होने पर, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और भूमि में या उस पर के अधिकार (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए थे ;

और उक्त केन्द्रीय सरकार का यह समाधान हो गया है कि साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, डाकघर संख्या 60, जिला-बिलासपुर-495006 (छत्तीसगढ़) (जिसे इसमें इसके पश्चात् उक्त सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे अनुपालन करने के लिए तैयार है;

अत: अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त 327.862 हेक्टर(लगभग) या 810.14 एकड़ (लगभग) भूमि और उस पर के भू-सतह अधिकार तारीख 27 अक्तूबर, 2012 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के स्थान पर, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात्: —

(1) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत् किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

(2) शर्त (1) के अधीन सरकारी कंपनी द्वारा, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे उक्त अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में, अपील, आदि, सभी विधिक कार्यवाहियों की बाबत् उपगत सभी व्यय भी सरकारी कंपनी द्वारा वहन किए जाएंगे;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके अधिकारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

(4) सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि को और उसके अधिकार या और किसी अन्य व्यक्ति के अधिकारों को अंतरित करने की शक्ति नहीं होगी और

(5) सरकारी कंपनी, ऐसे निर्देशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं ।

[फा. सं. 43015/13/2010-पीआरआईडब्ल्यू-1]
दोमिनिक डुंगडुंग, अवर सचिव

ORDER

New Delhi, the 4th February, 2014

S.O. 539.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 3241 dated the 19th October, 2012 in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 27th October, 2012, issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and the rights in or over the land described in the schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act.

And whereas the Central Government is satisfied that the South Eastern Coalfields Limited, Seepat Road, Post Box No. 60, District-Bilaspur-495006 (Chhattisgarh) (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the said Act, the Central Government hereby directs that the surface rights of 327.862 hectares (approximately) or 810.14 acres (approximately) in or over the said land so vested shall with effect from dated the 27th October, 2012 instead of continuing to so vest in the Central Government, vest in the Government company, subject to the following terms and conditions namely:—

(1) the Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, . as determined under the provisions of the said Act;

(2) a tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government company under condition (1), and all expenditure incurred in connection with any such tribunal and persons appointed to assist the tribunal shall be borne by the Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc., for or in connection with the rights in or over the said land, so vested shall also be borne by the Government company;

(3) the Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials, regarding the rights in or over the said land so vested;

(4) the Government company shall have no power to transfer the said land and the rights in or over the said land so vested, to any other person without the prior approval of the Central Government; and

(5) the Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land, as and when necessary.

[F. No. 43015/13/2010-PRIW-I]

DOMINIC DUNGDUNG, Under Secy.

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

नई दिल्ली, 7 जनवरी, 2014

का.आ. 540.—केन्द्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971(1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए का.आ. 1838, तारीख 30 जुलाई, 1998 द्वारा प्रकाशित भारत सरकार की अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात्

सारणी के स्तम्भ 1 में अधिकारी का पदनाम शीर्षक के अधीन "इंस्टीट्यूट इंजीनियर, राष्ट्रीय औद्योगिक इंजीनियरी संस्थान (एनआईटीआईई), मुम्बई" के प्रविष्टि के स्थान पर "कार्यपालक इंजीनियर, राष्ट्रीय औद्योगिक इंजीनियर संस्थान (एनआईटीआईई), मुम्बई" प्रविष्टि रखी जाएगी।

[फा. सं. 30-2/2013-टी. एस. 7]

प्रवीण प्रकाश, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

New Delhi, the 7th January, 2014

S.O. 540.—In pursuance of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby amends the notification of the Government of India published vide Number S. O. 1838 dated 30th July, 1998 as follows, namely:—

In the Table , under the heading Designation of the Officer, in column 1 for the entry" Institute Engineer, National Institute of Industiral Engineering (NITIE), Mumbai", the entry "Executive Engineer, National Institute of Industrial Engineering (NITIE), Mumbai" shall be substitued.

[F. No.30-2/2013-TS.VII]

PRAVEEN PRAKASH, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 16 जनवरी, 2014

का.आ. 541.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 320/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-01-2014 को प्राप्त हुआ था ।

[सं. एल-22012/136/2000-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 16th January , 2014

S.O. 541.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 320/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Saoner Sub Area of WCL, and their workmen, received by the Central Government on 16/01/2014.

[No. L-22012/136/2000-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/320/2000 Date: 18.12.2013

Party No. 1 : The Sub Area Manager,
Saoner Sub Area of WCL,
Saoner, Distt. Nagpur (MS)

V/s.

Party No. 2 : Shri Satish P. Naik
Ward no. 15, Saoner, Po & Teh
Saoner, Distt. Nagpur.

AWARD

(Dated 18th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Satish P. Naik, for adjudication, as per letter No. L-22012/136/2000-IR (CM-II) dated 08/21.11.2000, with the following schedule:-

"Whether the action of the management of Saoner Sub-Area of WCL, Saoner, Distt. Nagpur in awarding the punishment of dismissal from services to Shri Satish Purshattam Naik, General Mazdoor, w.e.f. 25.03.1999 is legal and justified? If not, to what relief is the workman is entitled and from which date?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Satish Purshattam Naik, ("the workman" in short) filed the statement of claim and the management of WCL, ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he was served with the charge sheet dated 24/27.01.1998, on the allegation of remaining unauthorized absent from duty from 12.07.1997 to 24.01.1998 and the charge sheet was duly replied by him, in which, it was specifically mentioned that he was not unauthorizedly absent or absent without any notice to the employer and he was suffering continuously from stomachache and was undergoing treatment at WCL hospital and he had duly informed about the same to the superintendent of Mines/colliery Manager, Saoner Mines no.2 by submitting applications dated 31.07.1997, 26.08.1997, 29.09.1997, 25.10.1997 and 29.11.1997 and he did not commit any misconduct as contemplated under clause 26.30 of the Standing order and the reason of his absence due to his illness was duly communicated by him to the party no.1, by submission of the medical report, medical card and certificate issued by the P.H.C., Saoner and he felt ill in the first shift on 11.07.1997 and was treated in the Dispensary of W.C.L. at Saoner from 12.07.1997 to 28.07.1997 and from 29.07.1997 he was treated at P.H.C., Saoner and inspite of knowing that he was on medical leave, issuance of the charge sheet by party no.1, itself was bad in law and he was allowed to join duty vide order dated 15/16.06.1998, issued by the Colliery manager, Saoner Mine no.1 and since then till his dismissal, he was on duty and the order of his dismissal on the allegation of unauthorized absence is patently illegal, arbitrary and bad in law.

It is further pleaded by the workman that the Manager without taking into consideration his explanation and the documents produced by him, conducted the departmental enquiry and completed the same in an arbitrary manner and the Enquiry Officer did not give him sufficient opportunity to defend himself and completed the enquiry in a haste in one sitting on 16.09.1998 and the report of the enquiry officer is without any date, which creates doubt about the fairness of the enquiry and the enquiry officer did not consider the documents in regard to his treatment and the findings of the Enquiry Officer are without any basis and the information of his medical treatment for the period from 12.07.1997 to 28.07.1997 was

entered in the "sick & unfit" register of labour officer, Mine no.1 and therefore, the conclusion of the Enquiry Officer that no information was given by him to the management about his illness is per se illegal, arbitrary and bad in law and he was treated at PHC, Saoner from 29.07.1997 to 17.02.1998 and then at Jawaharlal Hospital, Kamptee of WCL from 18.02.1998 to 17.04.1998 and there was no fault on his part and the impugned order of dismissal dated 25.03.1999 is illegal and bad in law. The workman has prayed to quash and set aside the order of dismissal dated 25.03.1999 and to reinstate him in service with continuity, full back wages and consequential benefits.

3. The party no.1 in the written statement has pleaded inter-alia that charge sheet dated 27.01.1998 was issued against the workman for remaining absent unauthorisedly from 12.07.1997 to 24.01.1998 and the workman did not inform the Manager, Mine no.1 about his so called sickness and the Enquiry Officer in his findings has clearly stated that after the workman reported sick in WCL dispensary on 12.07.1997, he never turned up for his treatment nor intimated about his sickness and the workman in a planned way had taken step to cover up his unauthorized absence and the workman was a habitual absentee and he was punished on more than one occasion and the workman was allowed to join his duties vide order dated 15/16.06.1998, pending decision of the enquiry and the Enquiry Officer allowed several adjournments to the workman in the enquiry and also allowed him to take assistance of coworker, which he availed and the enquiry officer considered the documents produced by the management as well as the workman and based his findings on the documents and the workman was a habitual absentee and in the past, charge sheets dated 03.12.1992, 6/7.01.1994 and 01.08.1994 were submitted against him and punishment of warning, stoppage of one increment and stoppage of one increment respectively were passed against the workman and the punishment imposed against the workman is justified and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding a departmental enquiry, the fairness or otherwise of the departmental enquiry was been taken as a preliminary issue for consideration and by order dated 29.10.2013, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that the workman was charged for remaining unauthorized absent for the period from 12.07.1997 to 24.01.1998 and during the relevant period, the workman was sick and was under the treatment of the doctors of the Hospital of the party No.1 and the Superintendent/Manager of Saoner Mine was duly informed about his illness and treatment by the workman by his applications dated 31.07.1991, 26.08.1997, 29.09.1997, 25.10.1997 and 29.11.1997 and the workman was not absent from duty unauthorisedly or without sufficient cause. It was further submitted by the learned advocate for the workman that in the departmental enquiry, no documentary evidence or proof was placed on record by the management, in support of the charge of unauthorized absence of the workman and it is pleaded by the party No.1 in the written statement that the documents/papers were given to the workman on 10/11.3.2000, i.e. after completion of the departmental enquiry and the said fact shows that the punishment of dismissal is based on afterthought documents and no document was proved and established in support of the charge and the charge sheet issuing authority was not examined in the enquiry and as such, the punishment is not only harsh, but also, disproportionate and contrary to evidence on record. It was further submitted by the learned advocate for the workman that the workman was ill and he produced the documents in support of his illness and treatment and the Enquiry Officer without taking into consideration the said documents properly, erroneously held the charges levelled against the workman to have been proved and the findings of the Enquiry Officer are perverse as the same are against the evidence on record and as basing on such perverse findings, unreasonable and disproportionate punishment has been imposed, the order of punishment is liable to be set aside and the workman is entitled to be reinstatement in service with continuity and full back wages.

In support of the contention, the learned advocate for the workman placed reliance on the decisions reported in A.I.R. 1986 S.C.-2118 (Kashinath Dikhista Vs. Union of India), A.I.R.1982 S.C.-937 (State of Uttar Pradesh Vs. Mohd. Sharif) and A.I.R. 1974 SC-2335 (State of Punjab Vs. Bhagat Ram).

6. Per contra, it was submitted by the learned advocate for the party No.1 that in this case, vide order dated 29.10.2013, it has already been held that the departmental enquiry conducted against the workman to be legal, proper and in accordance with the principles of natural justice and it is well settled that the Tribunal does not sit as a court of appeal in such a case and the findings of the Enquiry Officer are based on the evidence on record of the enquiry and the Enquiry Officer has assigned reasons in support of his findings after analyzing the evidence adduced by the parties in the enquiry and as such, the findings of the Enquiry Officer cannot be said to be perverse and grave misconduct of unauthorized absence from duties has been proved against the workman in a properly conducted departmental enquiry and therefore, the punishment imposed against the workman cannot be said to be shockingly disproportionate, so there is no scope to interfere with the punishment. The learned advocate for the party No.1 further submitted that though on 12.07.1997, the workman reported sick for the first time

in the dispensary of the management, thereafter, he never reported in the said dispensary for treatment and the workman also did not inform the management about his sickness and he did not obtain any leave in accordance with service Rules and the workman also did not produce any document in support of his illness before the Enquiry Officer and the management right from the beginning had disputed the claim of the workman of sending applications for leave, under certificate of posting and in absence of production of cogent evidence by the workman to prove the receipt of such applications by the management, such claim cannot be accepted and the punishment imposed on the workman is in accordance with the Rules.

It was further submitted by the learned advocate for the party No.1 that without the submission made above, in case the reference is answered in favour of the workman, then the workman is not entitled to back wages, as he has failed to prove that he was not gainfully employed after the date of his dismissal and otherwise also, it cannot be presumed that the workman sat idle for so many long years and the reference is liable to be answered in the negative.

In support of the contention, the learned advocate for the Party No. 1 placed reliance on the decision reported in (2008) ISCC – 224 (L & T Komatsu Ltd. Vs. N. Udaya Kumar).

7. It is well settled by the Hon'ble Apex Court in a number of decisions that the Tribunal has no jurisdiction to sit over the findings of the Enquiry Officer as the Appellate Authority and a finding recorded in a domestic enquiry cannot be characterized as perverse by the Labour Court, unless it can be shown that such a finding is not supported by any evidence or is entirely opposed to the whole body of the evidence adduced.

So, keeping in view the settled principles as mentioned above and in the decisions cited by the learned advocates for the parties, now, the present case in hand is to be considered.

8. On perusal of the documents of the departmental enquiry conducted against the workman, it is found that the Enquiry Officer in his report has categorically mentioned that the workman in his defence produced eleven documents and on perusal of the said documents, he found that the workman was absent from duty from 12.07.1997 to 24.01.1998, but during the said period, he was ill and undergoing treatment and first of all, he was treated at Saoner WCL Dispensary from 12.07.1997 and such information has been entered in the sick and unfit register of the office of Superintendent of Mine No. 1 and thereafter, the workman was treated at PHC, Saoner from 29.07.1997 to 17.02.1998, but he did not intimate about the same in the office of Mine No. 1 and no leave was sanctioned and the workman should have intimated about his illness and treatment time to time to the management, but he did not do so and therefore, the charge under clause 26.30 of the Standing Order of remaining unauthorized absent is proved. However, on perusal of the proceedings of the enquiry, it is found that on 16.09.1998, the defence representative produced the documents about the illness and treatment of the workman and copies of the applications sent by the workman to the management under certificate of posting for sick leave and gave statement that the workman was sick from 12.07.1997 and was treated in different hospitals including the dispensary and hospital of WCL and intimated the management about his illness and treatment and also applied for sick leave. The workman also confirmed the statement given by his co-worker, in his statement given before the Enquiry Officer. The documents produced on behalf of the workman were taken on record of the enquiry without any objection. The management representative did not challenge the genuineness of the documents produced by the workman. Even, it was not suggested that the applications sent by the workman were not received by the management. It is clear from the documents produced by the workman that during the relevant period, he was ill and under medical treatment and he also intimated such facts to the management and also prayed for grant of sick leave and his absence from 12.07.1997 to 24.01.1998 was not without sufficient cause. The Enquiry Officer in his report has admitted such facts partially i.e. about the absence of the workman from duty from illness from 12.07.1997 to 28.07.1997 and about entry of the same in the sick and unfit register of the management. It is held that the findings of the Enquiry Officer are against the evidence on record of the enquiry and therefore are perverse. As basing on such perverse findings, the punishment of dismissal of the workman from services has been passed, the same cannot be sustained. The order of dismissal of the workman is held to be illegal.

9. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled. As the order of punishment of dismissal of the workman from services is held to be illegal, the workman is entitled for reinstatement in service with continuity and all other consequential benefits.

So far the back wages is concerned, it is not pleaded and proved by the workman that since the date of dismissal from services, he has not been gainfully employed. However, keeping in view the facts and circumstances of the case, I think that grant of 50% of back wages from the date of dismissal of the workman till the date of his actual reinstatement in service, will serve the ends of justice in this case. So, the workman is granted 50% of back wages from the date of his dismissal till the date of his actual reinstatement in service. Hence, it is ordered:-

ORDER

The action of the management of Saoner Sub-Area of WCL, Saoner, Distt. Nagpur in awarding the punishment

of dismissal from services to Shri Satish Purshattam Naik, General Mazdoor, w.e.f. 25.03.1999 is illegal and unjustified. The workman is entitled for reinstatement in service with continuity and all other consequential benefits. The workman is also entitled for 50% back wages from the date of his dismissal till the date of his actual reinstatement in service. The Party No. 1 is directed to comply with the award within one month of the publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 जनवरी, 2014

का.आ. 542.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आरपीएफसी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 190/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-01-2014 को प्राप्त हुआ था ।

[सं. एल-42012/86/2002-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 16th January , 2014

S.O. 542.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 190/ 2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of O/o RPFC, Nav Bharat Press Complex, Rajbandha Maidan, and their workmen, received by the Central Government on 16/01/2014.

[No. L-42012/86/2002 - IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/190/2002 Date: 23.12.2013

Party No. 1(a) : The Regional Provident Fund Commissioner, Nav Bharat Press Complex, Rajbandha Maidan, G. E. Road, Raipur (Chhattisgarh)

(b) : The Assistant Provident Fund Commissioner O/o. RPFC, Nav Bharat Press complex, Rajbandha Maidan, G. E. Road, Raipur, (Chhattisgarh)

Versus

Party No. 2 : Shri Komaldas Ghidode, S/o Shri Bulwadas, Village: Tulsi Baradera, Thana: Mandir-Hasaud, PO : Kurud, Camp-Kurud, Distt. Raipur (Chattisgarh)

AWARD

(Dated : 23rd December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Employees Provident Fund Commissioner and their workman, Shri Komaldas Ghidode, Ex-peon for adjudication, as per letter No. L-42012/86/2002-IR(CM-II) dated 30.10.2002, with the following schedule :

> "Whether the termination of services of Shri Komaldas Ghidode, Ex-Peon (on daily wages) of O/o. Regional Provident Fund Commissioner, Raipur of Employees Provident Fund Organisation under Ministry of Labour w.e.f. 03.07.99 is legal and justified? If not, to what relief he is entitled to?

2. On receipt of the reference, parties were notice to file their respective statement of claim and written statement, in response to which, Sh. Komaldas Ghidode ("the workman" in short) filed the statement of claim and the management of Regional Provident Fund Commissioner ("Party no. 1" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that he was appointed by the party no.1 as a peon on daily wages basis on 29.09.98 and he worked till 03.07.99 continuously and he completed 268 days of work, but without any reason, the party no.1 terminated his services orally on 03.07.99 and he agitated the matter before the party no.1, by his letter dated 05.07.99 and the first party appointed one Mohanlal Yadav in his place and his appointment was after conducting an interview by party no.1, for the post of temporary peon and the post on which, he was working was a clear and vacant post and before termination of his services, the mandatory provisions of the Act were not complied with and he was not given one month's notice in advance or one month's salary in lieu of the notice and retrenchment compensation and as such, the termination of his service is illegal and the provision of section 25-G was also not complied with and one junior employee, Pramod Kumar Ratre was appointed permanently as a peon. The workman has prayed for setting aside the order of termination and to reinstate him in service as a peon with full back wages and continuity in service.

3. The party no.1 in its written statement has pleaded inter-alia that the workman was engaged for limited period to meet some exigencies from time to time, during

the period from 08.10.98 to 02.07.99 and he actually worked for 200 days, for which, he had already been paid and the workman on 08.06.1999 submitted an application for issuance of an experience certificate, as he was planning to work in Bhilai Nagrik Sahkari Bank, Bhilai and thereafter, the workman stopped coming to its office and the workman kept quite for about for one and half years and suddenly served a notice through his advocate in December, 2000. It is further pleaded by the party No.1 that the workman has committed a legal error in counting the days of his engagement and while counting the days of work, the days on which he had actually worked and for which, wages had been paid are to be counted and while calculating the days of work, the days on which no work had been done or no wages had been paid, the same should not have been taken into account. It is further pleaded by the party no.1 that the Employees Provident Fund Organization is a statutory body constituted under the Employees Provident Funds and Miscellaneous provisions Act, 1952, by the Government of India and there is recruitment rules for appointment of Group 'D' posts and so far the appointment of Shri Ratre and Shri Mohanlal Yadav is concerned, the appointing authority, Regional Provident Fund Commissioner-I, M.P. Region had published a press notification calling for applications from general public for appointment to the post of peon, watchman and sweeper for M.P. Region including Raipur office and in response to the said notice, applications of 62 candidates direct from the open market were received and name of 74 candidates from the local employment exchange were sponsored and the appointing authority after observing all the procedure laid down in the Rules for recruitment of Gr. "D" employee, selected and appointed some persons including Shri Ratre and Shri Yadav and though the workman stopped attending the office in July, 99 and in the very same month, the press notice for appointment was issued and the workman did not apply for appointment, in response to the said press notice and the said fact indicated that at the relevant time the workman was not interested to serve with it. It is also pleaded by the party No.1 that as the workman worked for 200 days, the provisions of the Act are not applicable to his case and as the workman did not work for the minimum period as prescribed in the Act, it was not under any obligation to observe the procedure provided in the Act and the provisions of Section 25-F of the Act have no application to the case of the workman and for that the workman is not entitled to any relief.

4. The workman has examined himself as a witness in support of his case and reiterated the facts mentioned in the statement of claim, in his examination-in-chief, which was on affidavit.

The workman in his cross-examination has admitted that he was appointed initially for 89 days temporarily and he worked in the different sections as per list.

One Ram Lakhan Gupta, an Assistant Provident Fund Commissioner has been examined as a witness on behalf of the party No.1. The evidence of the party No.1 is also on affidavit. The witness for the party No.1 in his examination in chief has reiterated the facts mentioned in the written statement. In his cross-examination, this witness has stated that he has no personal knowledge about the engagement and disengagement of the workman and the contents of his affidavit are based on the documents available in the office and the appointment of the workman was made on 29.08.1998 on daily wages basis and a call letter was sent to the workman to appear in the interview. This witness has also stated that Mohanlal Yadav was appointed as a regular peon, after his selection in a regular recruitment test there is no provision for maintaining seniority list of daily wagers.

5. It is the own case of the workman that he was engaged on 29.08.1998 and was orally terminated on 03.07.1999. It is clear from the pleadings of the workman that he did not work for a total period of 12 months.

At this juncture, I think it proper to mention about the decision of the three judges Bench of the Hon'ble Apex Court reported in A.I.R. 1963 S C -1994 (Sur Enamel and Stamping Works Ltd. Vs. The workmen)

It is held by the Hon'ble Apex Court that:-

"Sec. 25-B- Completion of one year of continuous service by workman- Proof of -

"Before a workman can be considered to have one year of continuous service in an industry, it must be shown first that he was employed for a period of not less than 12 calendar months and next that during those 12 calendar months had worked for not less than 240 days. Where as in the instant case, the workman have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirement of section 25-B would be satisfied by the mere fact of the number of days being not less than 240 days."

So, applying the principles enunciated by the Hon'ble Apex Court in the decision as mentioned above, to the case in hand, it is found that the workman does not satisfy the requirement of Section 25-B & 25-F of the Act and as such, the provisions of the said section are not applicable to his case.

6. More over, in this case, the workman has claimed that he had worked for more than 240 days in the preceding 12 months of the date of his alleged termination, i.e. 03.07.99. On the other hand, the party no.1 has denied such plea and has pleaded that the workman worked for 200 days in total. It is well settled that in such a case, the initial burden lies on the workman to prove that he worked

for more than 240 days in the preceding 12 months of the alleged date of termination and such burden doesn't shift to the management and mere filing of the affidavit by the workman, claiming to have worked for more than 240 days doesn't discharge the burden of proof and for that, other reliable evidence is required to be produced. Keeping in view the settled principles as mentioned above, now the present case at hand is to be considered. The workman has filed the documents, Exts. W-5, W-6 and W-7 series (Exts. 7/1 to W 7/16) in support of his claim.

Ext. W-5 is the call letter sent by party No.1 to the workman to appear in the interview on 23.04.1998. On perusal of Ext.W-5, it is found that it was clearly mentioned in the same that the interview was for temporary peon on daily wages. Ext.W-6 shows thatt after the interview on 23.04.98, the workman was appointed as a peon for 89 days on temporary basis. The workman has filed 16 documents, Exts W-7/1 to 7/16, showing his engagement by party no.1 subsequent to his first appointment for 89 days. On perusal of those documents, it is found that the workman was engaged by the party no.1 for a day or two intermittently from 13.02.99 to 27.06.99 and those document shows that he worked for 17 days from 13.02.99 to 27.06.99. The workman has not produced any other documents to show that he had completed 240 days of work prior to 03.07.99. As the workman has failed to discharge the initial burden of proving that he worked for more than 240 days, in the preceding 12 months of the date of his alleged termination.

It is also clear from the materials available on record that Shri Pramod Kumar Ratre And Shri Mohanlal Yadav were appointed as peons on permanent basis after their due selection as per Rules of recruitment of party No.1. In view of the materials on record and the discussion made above, it is found that the provisions of Sections 25-F, 25-G and 25-H of the Act are not applicable to the case of the workman and the workman is not entitled to any relief. . Hence it is ordered:

ORDER

The termination of services of Shri Komaldas Ghidode, Ex-Peon (on daily wages) of O/o. Regional Provident Fund Commissioner, Raipur of Employees Provident Fund Organisation under Ministry of Labour w.e.f. 03.07.99 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 जनवरी, 2014

का.आ. 543.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 136/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/12/2002-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 16th January , 2014

S.O. 543.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 136/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Rayatwari Sub Area of Western Coalfields Limited, and their workmen, received by the Central Government on 16/01/2014.

[No. L-22012/12/2002-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/136/2002 Date: 02.12.2013

Party No. 1 : The sub-Area Manager,
Rayatwari Sub Area,
Western Coalfields Limited,
Post- Rayatwari, Dist. Chandrapur (M.S.)

Party No.2 : Shri S.R. Pandre,
General Secretary,
Lal Bavata Kamgar Union,
Bhiwapur Ward No.27,
Post & Distt. Chandrapur

AWARD

(Dated : 2nd December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Rayatwari Sub Area of Western Coalfields Limited and their workman, Shri Kamata Prasad Sadhu, for adjudication, as per letter No.L-22012/12/2002-IR (CM-II) dated 08.08.2002, with the following schedule :

> "Whether the action of the management of Durgapur Rayatwari Colliery of Western Coalfields Limited in fixing the wages of Shri Kamata Prasad Sadhu, piece rated Loader converted to time rated Timber Mistry category – IV at middle point of the basic of category-IV vide order No. WCL/CHA/Durgapur/2110 dated 26/30.07.1997 is legal and justified in terms of the settlement dated 02.11.1992? If not, to what relief is the workman entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Kamata Prasad Sadhu , ('the workman" in short), filed the statement of claim and the management of , ("Party No. 1" in short) filed their written statement.

The case of the workman as projected in the statement of claim is that he was working with the party No.1 from1973 in the permanent job of Tub Loader and was getting group wages of Loader as per the provisions of N.C.W.A and due to high blood pressure, he was under treatment of colliery Dispensary from the year 1992 to 1993 and he was sent by the colliery doctor to the Area Hospital, Chandrapur for further treatment and the Area Hospital, Chandrapur sent him to Government Hospital, Chandrapur for treatment, as per the advice of the Sub Area Manager, Rayatwari Sub Area and the Civil Surgeon of Government Hospital recommended for light duty for two months and as per the recommendations of the Civil Surgeon, party no.1 gave him light duty in time rated job, but paid salary of piece rated group wages of Tub Loader as per N.C.W.A. and in 1992, he submitted four applications to party No. 1 to allow him for time category, mentioning there in that as per the work, he would accept the category, but party No.1 did not consider his prayer and lastly on 05.05.1993, he filed an application again for time rated job and he would accept wage as per the category, but party No.1 remarked " Not possible" and returned the said application to him and inspite of the same, the party No.1 allowed him to continue in time rated job till 31st January, 1998 and paid salary of piece rated/group wages, basic and SPRA as per 5th NCWA, but by letter No. 2110 dated 30.07.1997, which was received by him in the month of January 1998, the party No.1 reduced his basic group wages and SPRA and due to such action of party No.1, he sustained a loss of about Rs.100/- per day and reduction of his wages was bad in law and was not in good faith and there was a settlement between the management of WCL and the union on 02.11.1992 to give protection of group wages including SPRA, but the party No.1 did not implement the said settlement in Rayatwari Sub Area, whereas, the said settlement was implemented in other Mines including Nandgaon Incline Chanda Rayatwari Colliery and as such he is entitled for protection of his basic group wages and SPRA of Tub Loader.

The workman has prayed to set aside the order dated 26/30.07.1997.

3. The party No.1 in the written statement has pleaded inter alia that the workman was working as a piece rated loader on permanent job since 1993 and was getting group wages of loader as per NCWA till he remained in piece rated job and because of the ill health of the workman and as per the recommendation of the doctor and on humanitarian consideration, the workman was allowed to work in time rated job and in 1992 and1993, the workman requested to allow him to work in time rated job permanently, giving an under taking to accept the wages as per work allowed in time rated job and the workman was allowed to continue to work in time rated job and was allowed to draw the wages and by letter No.2110 dated 30.07.1997, the workman was permanently shifted to time rated category from piece rated category and because of such placement, the wages of the workman was reduced and the workman cannot make any grievance of that because, he had himself requested for his conversion to time rated worker and be paid wages as per work allowed in time rated job and there was no question of issuing of any charge sheet or notice for change of designation and the change was made as per the request of the workman himself.

The further case of the party No.1 is that there was a settlement between it and the INTUC union on 02.11.1992 for protection of group wages, but subsequently there was vast changes to the said settlement and some clauses of the said settlement were changed by fresh agreement in the year 1995 with INTUC union and it was agreed not to protect the wages of piece rated worker on his conversion into time rated and it was also agreed that the wages of the worker should be fixed in time scale wage group and the workman cannot be permitted to approbate or reprobate at the same time and the workman having been made request for allowing him work in time rated scale with wages to be paid to time scale employee, he is stopped in law to resile from his earlier stand and the workman is not entitled to any relief.

4. It is necessary to mention here that the workman after filing of his evidence on affidavit in support of his claim, did not appear in the case for his cross-examination. After several adjournments, as the workman did not appear for his cross-examination. It was reported that the General Secretary of the union, who was representing the workman died. So, notices were issued to the workman in the addresses including his permanent address to appear in the case, but all the notices returned back without service. As neither the workman nor anybody else appeared on behalf of the workman, as per order dated 06.08.2013, the evidence of the workman on affidavit was expunged and order was passed to proceed ex-parte against the workman.

Party No. 1 declined to adduce any oral evidence in this case, so after hearing argument from the side of the management, on 18.09.2013, the case was closed and was posted for award.

5. It is settled beyond doubt that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the Court must fail.

Applying the settled principles as mentioned above to the present case in hand, it is found that in this case,

though the workman has challenged the order of fixation of his pay at middle point of the basic of Category-IV by order dated 26/30.07.1997 to be illegal, he has not adduced any evidence to prove the illegality of the said order. Hence, the reference cannot be answered in favour of the workman. Hence, it is ordered :

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 जनवरी, 2014

का.आ. 544.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 132/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/276/2001-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 16th January , 2014

S.O. 544.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 16/01/2014.

[No. L-22012/276/2001-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/132/2002 Date: 04.12.2013

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur.

(b) : The Assistant Manager,
Food Corporation of India,
Food Supply Depot, Wardha (East),
Wardha (M.S.).

Versus

Party No. 2 : Shri Ramesh S/o Bapurao Tundam,
Wardha, Tehsil and District- Wardha,
Wardha (M.S.)

AWARD

(Dated : 4th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Ramesh Bapurao Tundam, for adjudication, as per letter No.L-22012/276/2001-IR (CM-II) dated 25.07.2002, with the following schedule:-

> "Whether the action of the management of F.C.I., Nagpur in not absorbing Sh. Ramesh S/o Bapurao Tundam, Godown Mazdoor, F.C.I., Wardha w.e.f. 01.01.1993 consequent upon abolition of contract work of handling and transportation awarded to M/s. Anna Nigam Mathadi Kamgar Mazdoor Sahakari Sanstha (Maryadit), Contractor, Wardha is legal and justified? If not, what relief he is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ramesh Bapurao Tundam , ('the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he entered into the service of party No.1 as a godown mazdoor w.e.f. 20.08.1991 and was posted at Wardha (East) Supply Department and from the date of his initial appointment, he had been in continuous service of party No.1 till the date he was orally discontinued from services and the reason for his such oral termination as advanced by party No.1 was non-availability of work and while terminating his services, party No.1 had assured him that they would appoint him again as and when work would be available and he had completed 240 days of continuous service in the preceding year of his termination and thus had acquired the status of a permanent employee as contemplated under section 25 B of the Act and the termination of his services by party No.1 in breach of the mandatory provisions of the Act is illegal and bad in law and as a godown mazdoor, he was performing the work of cleaning and collecting grains and materials in the godown and he was a workman as contemplated under Section 2(S) of the Act and Party No. 1 is an industry as per the definition of Section 2(j) of the Act.

It is further pleaded by the workman that Party No. 1 had been maintaining a seniority list of labourers working under the Assistant Manager, Wardha Depot and in that list, his name was shown at serial number 81 and the said seniority list was a bogus list and the same was not a

genuine list and the same was prepared without taking into consideration the initial entry of the workers in its services and a similar seniority list had been prepared and maintained by Transport and Dock Workers Union, which was representing the workers employed with Party No. 1 and the said list had been prepared by the union by taking into consideration the initial date of appointment of the workers and the said union negotiated with party No. 1 to give first preference to the labourers, whose names were appearing in the seniority list prepared by it (union) in employment and accordingly, by taking into consideration his placement in the union's seniority list at serial no. 78, he was appointed as a labourer with Party No. 1 and Party No. 1, while preparing its seniority list, discarded the number of years of service put in by him and placed him at serial no. 83, which was much below to the juniors, who had joined services of Party No. 1 subsequent to him and the seniority list prepared by Party No. 1 was in violation of Rule 77 of the Industrial Disputes (Central) Rules, 1957 ("the Rules' in short) and Party No. 1 placed the names of Baby W/o Shrawan Mude, Dinesh Bura, Vijay S/o Punjabrao Dafale and Vasant S/o Ganuji Dhole, who were juniors to him in service, above him in the seniority list and Party No. 1 also included the names of "Hamal" in the said seniority list above his name and before termination of his services, Party No. 1 neither issued any notice nor paid any wages in lieu of the notice or retrenchment compensation as required under Section 25-F of the Act and Party No. 1 retained the services of his juniors, while terminating his services and Party No. 1 also recruited fresh hands in violation of the provisions of Section 25-G of the Act and the ground of termination of his services due to non-availability of work was also quite improper, as ample work was available with party No. 1 and activities were/are going on round the year and the termination of his services by Party No. 1 was in violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act and Rule 81 of the Rules and such action of Party No. 1 amounts to unfair labour practice and victimization in colorable exercise of power.

The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The Party No. 1 in the written statement denying all the adverse allegations made in the statement of claim has pleaded inter-alia that it (FCI) was created by the Government of India by the enactment, "Food Corporation of India Act, 1964" and it deals with procurement, storage, preservation and distribution of food grains and the Government of India, Ministry of Labour vide gazette notification no. SO-83(E) dated 01.11.1990, under Section 10(i) of the contract Labour (Regulation and Abolition) Act, 1970, prohibited employment of contract labour in the specified depots including FCI's owned go-downs at Wardha and for that its management entered into an agreement dated 07.05.1991 with the Transport and Docks Workers Union, Mumbai ("the union" in short) and Labours working with the contractor were brought under departmentalization ("A" category) labours and further by agreement dated 18.09.1992 arrived at between it and the above union, the labour strength i.e. 110 labours and 80 go-down mazdoors was fixed and accordingly, a committee consisting of its representatives, representatives of the above said union and the society was constituted and the committee verified and identified the labourers, on the basis of the records maintained by it and the records available with the Handling and Transport contractors appointed by it from time to time and the list of 142 loaders and 89 Go down Mazdoor prepared and submitted the union vide their letter No. ID/FCI-8/3036 dated 25.09.1992 and the committee verified and identified 110 loaders and 80 go-down mazdoors strictly as per the seniority and the committee submitted its report dated 30.09.1992 and the name of the workman was not included in the said list, he being a junior.

Party No. 1 has further pleaded that the workman was engaged by the contractor and not by it and therefore, there was no employer-employee relationship between it and the workman and due to recession of work, the voluntary retirement scheme was introduced by the management of FCI, Headquarters, New Delhi vide circular no. 14/2003 dated 22.09.2003, so as to curtail labour strength as well as the administrative charges, which clearly shows that no work is available with the FCI.

The further case of Party No. 1 is that it had floated tender for Go down Mazdoor and the said tender was given to an agency and the said agency is a necessary party and in the absence of the said agency, this proceeding is not maintainable and the services of the workman was terminated by the agency, because their contract came to an end and it had not given any assurance to the workman to appoint him again and the workman has no right to challenge the legality and propriety of the alleged termination and some of the loaders had filed the Writ Petition bearing No. 3401/97 before the Hon'ble Nagpur Bench of Bombay High Court and the Hon'ble High court by their judgment dated 29.07.2002 held that in view of the decision in Steel Authority of India & others Vs. National Union of Water Front Workers and others reported in 2001(7) SCC -1, the relief cannot be granted to the petitioners and for that the proceeding is to be rejected and the workman is not entitled to any relief.

4. Besides placing reliance on documents, both the parties have led oral evidence in support of their respective claims. The union has examined the workman as a witness, whereas, one Shri Rajesh Narayan Janbandhu has been examined as witness on behalf of Party No. 1. The examination-in-chief of the witnesses of both the parties are on affidavit and the witnesses have reiterated the facts mentioned in the statement of claim and written statement in their respective evidence.

5. The workman in his cross-examination has stated that he cannot say the date of the discontinuance of his services and no written order of appointment was given to him by the FCI and in the statement of claim and so also in his evidence on affidavit , he has not mentioned the date of his discontinuance and he worked for 200 days in total in FCI and he has not filed any document to show that he worked from 20.08.1991 till the year 92-93 at Wardha (East) Supply Depot.

6. The witness for the Party No. 1 in his cross-examination has stated that as per Exhibit M-IV, the Transport and Dock Workers' Union, Bombay had submitted a list of 142 loaders and 89 Go-down Mazdoors and as per Ext.M-IV, request was made for issuance of identity cards to the said 142 loaders and Go-down Mazdoors and Ext. M-V is the report of the committee which verified and identified the workmen working at FSD, Wardha and the name of the workman was at serial no. 76 of the list of the 89 Go-down Mazdoors and the workman was shown as medically fit in Ext. M-V and as per the agreement between management and the union, it was decided for industrialization of the contract labourers working with FCI.

7. At the time of argument, it was submitted by the learned advocate for the Party No. 1 that the workman was a contract labourer and he was engaged by the contractor, who had been given contract for supply of labourer and there was never any master and servant relationship between the Party No. 1 and the workman and there is no question of termination of the services of the workman by Party No. 1 and it was the contractor, who might have terminated the services of the workman, when the contract given to the said contractor came to an end. It was further submitted by the learned advocate for the Party No. 1 that the Party No. 1 entered into an agreement with the union on 07.05.1991 and accordingly, the labourers working with the contractor were brought under departmentalization labour and the workman was never assured by Party No. 1 for providing employment and by further agreement dated 18.09.1992 with the union, the labour strength was fixed i.e. 110 loaders and 80 go-down labourers and accordingly, a committee consisting of representatives of Party No. 1, the union and labour society was constituted and the committee after due verification and identification on the basis of records, strictly as per the seniority and the committee submitted the list on 30.09.1992 and the name of the workman was not included in the said list as he was a junior and ineligible and as such he was not given the employment and issuance of notification for abolition of the contract labour does not provide for automatic absorption of contract labourers and therefore, the action of Party No. 1 in not providing employment to the workman is justified and the workman is not entitled to any relief.

8. It is necessary to mention here that no argument was advanced on behalf of the workman and on the date fixed for argument, neither the workman nor the advocate for the workman appeared to make argument.

9. At the outset, I think it proper to mention that the schedule of reference in this case is regarding the legality or otherwise in not absorbing the workman with effect from 01.01.1993, consequent upon abolition of contract work of handling and transportation awarded to M/s Anna Nigam Marathi Kamgar Mazdoor Sahakari Sanstha (Maryadit), contractor, Wardha. From the schedule of reference and so also from the materials on record, it is crystal clear that this is not a case of illegal retrenchment of the workman from services as provided in the Act. It is also clear from the materials on record that the workman was never appointed by the party No.1 in its service and there was no master and servant relationship between the party No.1 and the workman. So, there is no question of termination of the services of the workman or compliance of the provisions of Section 25-F of the Act, by the party No.1. So, the entire claim of the workman made in the statement of claim and as stated in his evidence on affidavit about his retrenchment and reinstatement in service cannot be entertained or considered.

10. On perusal of the documents on record, it is found that Ext. M-II is the copy of the memorandum of settlement U/S 2 (p) and 18 (1) of the Act and rule 58 of the Rules, dated 07.05.1991, between party No.1 and the union and by the said settlement, it was agreed by party No.1 to abolish the contract system and to introduce departmentalisation of the labors working in their depots at Wardha and Panvel w.e.f. 01.05.1991 and to decide the strength of labour force for loading, unloading and other ancillary work mutually between it and the union.

It is also found from Ext. M-III, the copy of the memorandum of settlement between party No. 1 and the union dated 18.09.1992 that consequent to the memorandum of settlement dated 07.05.1991, it was decided by Party No. 1 and the union to departmentalization of 110 loaders and 80 mazdoors, subject to their identification and medical fitness. It is also found that the union by its letter dated 25.09.1992 (Ext.M-IV) submitted a list of 231 workers (142 loaders and 89 go-down mazdoors) for their identification, medical examination and issuance of identity cards to those workers as per above said agreements. It is also found that the name of the workman was at serial no. 76 of the list of the go down mazdoor submitted alongwith Ext. M-IV.

However, on scrutiny of the said list, it is found that the same was not according to the seniority of the workers engaged in FCI by the contractor, as because, according to the said list, the initial date of working of the workman has been mentioned as 01.05.1991, whose name appears at serial no. 78 of the said list, whereas, the initial dates of working of the workers, whose names are found below the name of the workman at serial nos. 79, 80, 81, 82, 84, 85,

and 90 have been mentioned as 25.5.90,7.8.90, 25.5.90, 16.9.90, 25.5.90 and 21.4.90 respectively, which were much earlier to the engagement of the workman.

Ext. M-V is the copy of the report of the committee constituted as per the terms of the settlement dated 07.05.1991. The workman has submitted the copy of the seniority list of mazdoors claiming the same to be prepared by the Party No.1. On perusal of the said list, it is found that the name of the workman is at serial no. 81. According to the workman, the names of Baby, Dinesh, Vijay and Vasant, who were juniors to him, were mentioned above his name. However, on perusal of the said list, it is found that the names of Baby, Dinesh, Vijay and Vasant are at serial nos. 79, 80, 73 and 46 in the list and the respective dates of their working are 27.10.90, 2.3.91, 25.5.90 and 21.4.90, which are much earlier to the date of working of the workman i.e. 1.5.91. Hence, there is no force in the submission made by the workman in that respect. The list prepared by the Party No. 1 has not been challenged in the conciliation or at the time of preparation of the list of go-down mazdoors by the committee.

It is clear from the materials on record that as the name of the workman was not included in the list of 80 go-down mazdoors, which was prepared by the committee strictly in accordance with the seniority of the workers, the workman was not given employment and no illegality was committed by the Party No. 1, as it acted according the settlements signed by it and the union. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 जनवरी, 2014

का.आ. 545.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 29/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/43/2013-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 16th January , 2014

S.O. 545.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Chanda Rayatwari Colliery Chandrapur Area of WCL, and their workmen, received by the Central Government on 16/01/2014.

[No. L-22012/43/2013-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/29/2013 Date: 16.12.2013

Party No. 1 : The Sub Area Manager,
Chanda Rayatwari Colliery,
Chadrapur Area of WCL,
Post: Rayatwari,
Teh. & Distt. Chandrapur (MS).

Versus

Party No.2 : The Joint General Secretary,
Rashtriya Colliery Mazdoor Congress,
C/o, Shri C.R. Tembhare,
Vaidhay Nagar, Near Ayyapa Mandir,
Tukum Ward 2,
Distt. Chandrapur (MS).

AWARD

(Dated: 16th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Chanda Rayatwari Colliery, Chandrapur Area of WCL and the union, Rashtriya Colliery Mazdoor Congress for adjudication, as per letter No.L-22012/43/2013-IR (CM-II) dated 30.05.2013, with the following schedule:-

> "Whether the action of the management of Chanda Rayatwari Colliery of Chandrapur Area, Western Coalfields Limited in denying employment to Shri Anand the dependent son of Shri Chabinath Singh who has already put in 37 years service, which is contrary to the provisions of para 9.4.4 of NCWA is legal and justified? If not, to what relief the workman entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due.

The notice sent to the union (petitioner) by RPAD was served personally on the Joint General Secretary and service of notice on him was held to be sufficient.

The management of WCL appeared through their advocates, Shri B.N. Prasad and Shri S.T. Sahasrabudhe.

Inspite of adjourning the case thrice for filing of statement of claim by the petitioner, the petitioner neither appeared nor filed any statement of claim. So, on 16.12.2013, the reference was closed, holding that the petitioner was not interested to proceed with the reference and the reference was fixed for award.

3. It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the petitioner has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered :

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 जनवरी, 2014

का.आ. 546.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 69/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/191/2000-आईआर (सी-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 16th January , 2014

S.O. 546.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Ballarpur Sub Area of WCL, and their workmen, received by the Central Government on 16/01/2014.

[No. L-22012/191/2000-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/69/2001 Date: 20.12.2013

Party No. 1 : The Sub- Area Manager,
Ballarpur Sub Area,
Western Coalfields Limited,
Post. Ballarpur, Distt. Chandrapur (MS)

Versus

Party No. 2 : Shri Lomesh Khartad,
Secretary, National Colliery Workers Congress, Br. Ambedkar Nagar,
Ballarpur, Post &Tah-Ballarpur,
Dist. Chandrapur.

AWARD

(Dated: 20th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Laxman Durge and 21 other contract labour, for adjudication, as per letter No.L-22012/191/2000-IR (C-II) dated30.08.2001, with the following schedule :

> "Whether the action of the management of Ballarpur Colliery of WCL, PO. Ballarpur, Distt. Chandrapur in not regularizing S/Sh. Laxman Durge & 21 other contract labour (list enclosed) is legal and justified? If not, to what relief they are entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union, National Colliery Workers Congress, ("the union" in short) filed the statement of claim on behalf of the workmen, S/Shri Laxman Durge and 21 others (As per the list enclosed with the letter of reference), ('the workmen" in short), and the management of WCL ("Party No. 1" in short) filed their written statement.

The case of the 22 workmen as presented by the union in the statement of claim is that it is a registered trade union under the Trade Unions Act, 1926 and the Party No. 1 is a Government Company and is a "State" within the meaning of Article 12 of the Constitution of India and the workmen had been working at Ballarpur underground Mine no. 3 & 4 Pits from February, 1992 to June, 1996 continuously and they had put in 190 days of attendance in consecutive years,during their employment and they were engaged in prohibited categories of work and the records were manipulated and Party No. 1 failed to maintain the registers and records in respect of the

workmen, in contravention of the statutory provisions of the Mines Act, 1952 and Mines Rule, 1955, Coal Mines Regulation, 1957 and directions and circulars issued by the Competent authority from time to time and the workmen were engaged in the underground in regular mining statutory operations of winning of coal, such as drilling, dressing, blasting, coal loading, cutting, making isolation stopping and ventilation stopping etc i.e. jobs as prescribed by law Rules i.e. Mines Act and Rules and other laws and they were being supervised, controlled, directed, administered and guided by the Party No. 1, through its officers in the underground mines and there was a smoke screen arrangement by Party No. 1, by putting intermediary, the so called contractor, to deprive the workmen from their legitimate dues and to keep them away from being treated as company's employees.

It is further pleaded by the union on behalf of the workmen that the so called contractor was not a contractor as envisaged in Contract Labour (Regulation and Abolition) Act and he was not competent to undertake such jobs and he had no valid license and he was supplying more than 20 workers on continuous basis for years and the attendance of the workmen was being marked by the register keeper/attendance clerk of Party No. 1 in the prescribed "Form C" register in accordance with the provision of Section 48 of the Mines Act and Rule 78 of the Mines Rules, 1955 and though, Party No. 1 is in possession of all the documents, it is suppressing the same and such action of Party No.1, calls for drawing of adverse inference against Party No. 1.

The further case of the union is that the so called contractor had been supplying the labours and Party No. 1 had been engaging them directly and documents to that effect are with the Party No. 1 and the Party No. 1 was not only deploying the workers on supply by the contractors, but also, taking action against them, by stopping them from working and therefore, they were the workers of the Party No. 1 and the attendance of the workmen was manipulated and the contractor used to pay less amount as wages and they were not made members of CMPF and they were not paid attendance bonus and other benefits and the management officials had supervised the payment and the concerned workmen were given statutory training under Mines Vocational Training Rules and they were stopped from working arbitrarily and without following the provisions of retrenchment under the Act and the jobs, which the workmen were doing, are regular, permanent and perennial in nature and the same are full time job and incidental to production of coal and other workers have been engaged by management for doing the same and as such, the workmen are entitled to be taken on the roll of the Party No. 1 with full back wages and consequential benefits.

The further case as advanced by the union is that the Ministry of Finance, Government of India issued Office Memorandum dated 10.02.1984 to all Government Department and Public Sector undertakings, not to engage contract labour normally on jobs of permanent nature and basing on such memorandum, the JBCCI decided that industry shall not employ labour through contractor or contractor's labour on jobs of permanent and perennial nature and to carry out such work departmentally and made provisions for the same, under para 11.5 of chapter XI in NCWA-III and the member Secretary of JBCCI issued implementation instruction no. 35 dated 17.07.1984 to all the coal companies, repeating the provisions under para 11.5 to 11.5.4 of NCWA-III, with a direction to implement the said provisions and such provisions were made in NCWAs-IV, V and VI also and provisions of NCWAs are mandatory and binding on Party No. 1 and management of Wani Area, Majri Area, Chandrapur Area and Nagpur Area regularized similarly situated workers and as such, the workmen are entitled for their regularization in services of Party No. 1 by treating them as management's workmen w.e.f. 01.02.1992 and for wages from 01.06.1996 till the date they will be allowed to resume duty and all other consequential benefits.

3. The Party No. 1 in the written statement has pleaded inter-alia that in October, 1995, 15 persons claiming to have worked under a contractor, namely, Shri S.K. Khatod at Ballarpur 3 & 4 pits, during the years 1992 and 1993, submitted a joint application dated 18.10.1995 to the Asstt. Labour Commissioner (Central), Chandrapur demanding their regularization and it(management of WCL) contested their claim, as a result of which, the conciliation ended in a failure and the ALC (C), Chandrapur submitted his failure report to the Central Government vide his letter dated 11.04.1996 and the Ministry of Labour did not consider the said dispute fit for reference, as conveyed vide letter dated 18.03.1997.

It is further pleaded by Party No. 1 that the President of the Union vide his letter dated 24.03.1999 addressed to the ALC (C), Chandrapur raked up the matter again claiming regularization of the workmen and the union also filed some documents in support of its claim and most of the said documents were manipulated and manufactured with the intention to cover up the weakness of the claim and in the original claim, there were only 15 persons, whereas, in the subsequent claim, the number was inflated to 22 persons and it is clear that union is trying to induct the name of some persons, who had not worked with the contractor, therefore, no credence can be given to the claim of the union and the union never raised the claim before it and directly approached the ALC (C), Chandrapur and in order that a matter assumes the character of an industrial dispute, the demand must be made before the management and if there is no demand and no refusal thereof, there cannot be any valid industrial dispute and therefore, no industrial dispute exists between the parties warranting adjudication and the union is not the union of the workmen

of Ballarpur Colliery and the union has not assumed the character of a representative union, therefore, the union is not competent to raise the industrial dispute on behalf of the workers of Ballarpur Colliery.

The further case of Party No. 1 is that the workmen involved in the reference were employed by the contractor for the purpose of execution of work awarded to him under the terms of the contract and they were paid by the contractor and they were never its employees and there was no employer-employee relationship between it and the workmen and one Shri S.K. Khatod was awarded contract for doing different kind of jobs at Ballarpur Colliery on the basis of tenders and all the contracts were in writing on legal documents and duly signed by it and the contractor and the contractor had submitted the payment sheets with regard to the wages paid to his workers, which were duly certified by the officers of the employer, as required under the Contract Labour (Regulation and Abolition) Act and the contract was of sporadic nature and for fixed period and the contractor was not engaged in prohibited or permanent or perennial nature of jobs and the contractor never engaged more than 19 persons on any day against any specified job and the name of the contractor's workers, who were paid wages and duly certified, do not tally with the list of the workmen and obviously, the list has been inflated by the union and induction of names have been made with ulterior motive and on verification of the list of the 22 workmen, it is noted that many of the said persons had not worked with the contractor during the period in question and the details of the persons are incomplete, vague and it is not possible to identify them and the workmen did not work continuously in Ballarpur Colliery 3 & 4 Pits from February, 1992 to June, 1996 and they did not put 190 days attendance during the execution of the work by the contractor and otherwise also, there is no question of regularization of contract workers and the workmen were not engaged in prohibited categories of work and it had maintained statutory registers under the Mines Act, Rules and Regulations in respect of all the persons, who were required to work in the underground and it had never violated the provisions of the Contract Labour (Regulation & Abolition) Act and the workmen were never appointed or engaged by it, but however, any person who goes to work in the underground, he is subjected to Safety Rules and Regulations, which are to be taken care of by the competent person in the mine and the contract was given to the contractor legally and there was no question of any smoke screen and the documents submitted by the union are false, fabricated and forged and it was not deploying the workmen engaged by the contractor and any person, who is deployed in underground, whether departmental or otherwise is given statutory training under Vocational Training Rules for safety reason and there is no question of regularizing the workmen and they are not entitled to any relief.

4. In the rejoinder, it is pleaded by the union that the reference has been made as per the recommendations of the ALC (C), Chandrapur and after due examination by the Ministry at different levels and the earlier application was rejected on technical grounds and the same was raised by the workmen themselves and not by the union and the earlier rejection by the Ministry has no relevancy with the instant dispute and earlier, some workers chose to approach the ALC (C), Chandrapur and others did not, but the same does not debar other workers to raise the dispute through the union and the dispute is valid and in view of the provisions of Section 36 of the Act and the dictum of the Hon'ble Apex Court and Hon'ble High Courts in different judgments, it is competent to raise the dispute on behalf of the workmen and Party No. 1 has concealed the true facts and the documents are concocted and manipulated with a view to hide the camouflage arrangements and the job of lifting of so called shaley coal and loading the same into coal tubs and sending the same to coal depots on surface, relate to production of coal and sale and the same is prohibited category of job and the other jobs are also prohibited categories of jobs and the workmen are entitled for regularization and for other relief.

5. Both the parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

Three witnesses have been examined on behalf of the union. The witnesses examined on behalf of the union are Chandrakant Telang (workman), Devraj Nishad (workman) and Lomesh Maroti Khartad, said to be the General Secretary of the union.

One witness, namely, Mithilesh Kumar Singh, Dy. Manager (Personnel) of Ballarpur 3 & 4 Pits has been examined on behalf of the party No.1.

The respective examination-in-chief of the witnesses examined on behalf of the union and the only witness examined on behalf of the party No.1 are on affidavit.

6. In their evidence on affidavit, the three witnesses examined on behalf of the union have reiterated the facts as mentioned in the statement of claim and the rejoinder.

However, workman, Chandrakant Telang in his cross-examination has admitted that he was not given any appointment letter by the party No.1 and he was working under the contractor and from 1996, the contract between WCL and the contractor was terminated. It is to be mentioned here that in the statement of claim, in paragraph 5, it is claimed by the union that the workmen were working continuously in the underground mine of Ballarpur Colliery 3 & 4 Pits since February, 1992 till June, 1996, but in his examination-in-chief, workman Chandrakant Telang contradicting such claim, has stated that after taking vocational training, he was working in Ballarpur Colliery 3 & 4 Pits since 1991. Moreover, in his cross-examination,

this workman has admitted that he himself and other workers had represented the Asstt. Labour Commissioner (C), Chandrapur for redress and in that application,(Ext.-M-I),they had mentioned that they were working from March, 1992 to 1995 and he has not filed any document to show that he started working in 1991 and continued till 1996 and Ext. M-I had been signed by 15 workers including himself and all the 15 workers were working under the contractor and they were engaged by the contractor in WCL and he does not remember the name of the other workers working under the contractor, besides the 15 workers, who had signed on Ext. M-I and alongwith the application, Ext. M-I, they had submitted the documents Exts. M-II and M-III.

7. Workman, Devraj Nishad in his cross-examination has stated that he had worked from 1992 to 1995 under the contractor and when the contract work of the contractor was stopped, their engagement was also stopped and the contractor was making payment of their wages.

8. Witness No. 3 for the union, Lomesh M. Khartad in his cross-examination has categorically admitted that the workmen in question worked with WCL from February, 1992 to June, 1996 and the workmen were engaged in WCL by the contractor and when the contract given to the contractor, S.K. Khatod was over, the contractor disengaged the workmen from WCL, from July, 1996.

9. Mithilesh Kumar Singh, the witness for the management in his evidence has stated that the workmen were engaged by Shri S.K. Khatod, the contractor and they were never engaged by the management as departmental workers and the contracts between the management and the contractor had been entered into after inviting tenders in valid and legal manner and the jobs entrusted to the contractor were neither permanent nor perennial in nature and the same were not prohibited under the notification of the Government under prohibition of contract work in the coal mines.

Though, the witness for the management has been cross-examined at length, his assertion that the workmen were engaged by the contractor and contractor, Shri S.K. Khatod was given the contracts and the nature of the works given to the contractor was not of permanent or perennial in nature has virtually not been challenged.

The witness for the management has admitted that the contractor, Shri S.K. Khatod did not obtain any license as a contractor to supply contract labours and agreements with the contractor were executed subsequent to the date of giving of the contracts and ventilation and isolation are incidental jobs for safety and production of the mine.

10. At the time of argument, it was submitted by the learned advocate for the workmen that the Party No. 1 is a state and it is expected that it should not discriminate and acts strictly in accordance with law and the workmen were engaged in continuous, perennial and incidental nature of jobs and essential for production of coal, safety of persons and mine and in prohibited category and they were working under the supervision, control and directions of the Sirdars, Overmen, Asstt. Manager and other officers and their attendance was being marked in form 'C' register, which can be found from the document, W-2 and they were workmen of the management and smoke screen arrangement was made by the management to show them as contract workers and the discontinuance of the workmen amounts to retrenchment and the provisions of Sections 25-F, 25-B and 25-G were not flowed and the management had regularized the services of other similarly situated workers, as clear from the documents W-7 to W-13 and from the entry made on the document W-15 by the Asstt. Manager, about the stopping of three workmen from work clearly indicates master and servant relationship between the management and the workmen and the workmen are entitled for regularisation. It was further submitted by the learned advocate for the union that there was violation of the contract Labour (Regulation & Abolition) Act and Rules and the witness for the management has admitted such violation by the management and on that ground also, the workmen are entitled for regularization.

In support of such contention, the learned advocate for the union placed reliance on the decisions reported in 2007 (115) FLR-427 (Mohan Mahto Vs. M/s. Central Coal Fields Ltd.), 2008 II CLR-147 (U.P. State Electricity Board Vs Pooran Chandra Pandey) and 2001 LAB IC-322 (International Airport Authority Employees Union Vs. International Airport Authority of India).

11. Per contra, it was submitted by the learned advocate for the Party No. 1 that the workmen were never engaged by the management of Ballarpur Sub Area and they were engaged by Shri S.K. Khatod, the contractor and contracts between the management and the said contractor had been entered into after inviting tenders in valid and legal manner and contract of the works of construction of isolation stopping, ventilation stopping, cleaning of shaley coal and mud and cutting of drains, which were neither permanent nor perennial in nature were given to the said contractor and the same were also not prohibited under the notification of the Government regarding prohibition of contract work in the coal mines and it is crystal clear from the admission made by the witnesses examined by the union, the evidence of the witness for the management and the documentary evidence on record that the workmen were engaged by the contractor and there is no question of the regularization of the workman.

It was also submitted by the learned advocate for the Party No. 1 that there was never any violation of the provisions of the Contract Labour (Regulation and

Abolition) Act or Rules by the party No.1 and the contractor had never engaged more than 19 workers on any day and therefore, there was no need for him to obtain any license for the same and the case of the workmen is not a case of retrenchment and on that ground also, the workmen are not entitled to regularization. In the alternative, it was submitted by the learned advocate for the Party No. 1 that violation of the provisions of the Contract Labour (Regulation and Abolition) Act and Rules by the principal employer or by the contractor attracts Penal Provisions of Sections 23 & 25, but does not have the effect of rendering the contract labour, employees of the principal employer. It was also submitted by the learned advocate for the Party No. 1 that there was never any discrimination against the workmen and the case of the workmen was not similar to the cases referred by the union and the workmen are not entitled to any relief.

12. The first contention raised by the learned advocate for the union is that the workmen were workmen of the management and management made smoke screen arrangement to show them as contract workers. However, there is no force at all in the said submission. In fairness to the workmen, such submission is to be mentioned and rejected out rightly, in view of the schedule of reference made by the Central Government. In the schedule of reference itself, it has been clearly mentioned that the workmen were contract labours. The schedule of reference has never been challenged by the union or workmen to be not correct. Even in the statement of claim and in the rejoinder not a whisper has been made that the schedule of reference is not correct or that the workmen have been wrongly referred as contract labour.

Documents, Exts. M-I to M-IV filed by the Party No. 1 and the documents, W-2 to W-4 and W-15 show that the workmen were contract labours engaged by the contractor, Shri S. K. Khatod, who was given contact legally, after floating tenders by the Party No. 1 to execute certain works.

As already mentioned above, all the three witnesses examined by the union have univocally admitted that all the workmen were engaged by the contractor and when the contract of the contactor was over, the contractor stopped the engagement of the workmen in WCL.

From the schedule of reference and the oral and documentary evidence on record, it is crystal clear that the workmen were contract labours engaged by the contractor and they were never the workers of Party No. 1 and Party No. 1 had never engaged or employed them directly and it is not true to say that the Party No. 1 created a smoke screen to show them as contract labour.

13. The next submission made by the learned advocate for the union is that the contractor engaged by the Party No. 1 did not obtain any license from the competent authority as labour contractor and to engage contract labours as required under the contract Labour (Regulation and Abolition) Act and though there was prohibition for engagement of contract labours by the Government as per the notification, W-5 and the Implementation Instruction No. 35 dated 17.07.1984 issued by the JBCCI basing on the Provisions of NCWA-III, W-6, in jobs of permanent and perennial nature, the workmen were engaged in jobs of permanent and perennial nature and as there was violation of the provisions of the Contract Labour (Regulation and Abolition) Act, the workmen are entitled for regularization.

The learned advocate for the union placed reliance on the decision reported in 2001 LAB IC-322 (Supra) in support of such contention.

14. The Hon'ble Apex Court, in the said decision have held that :

> "Contract Labour (Abolition and Regularization) Act (37 of 1970) S.10 – Regularization of service- Sweeper working in car in International and National Airports – Are entitled to be regularized in view of notification dated 09.12.1976- Since car parking is part of Airport building."

However, with respect, I am of the view that the said decision has no clear application to the present case in hand, as the facts and circumstances of the case referred in the decision and the present case are quite different from each other.

15. In the case in hand, it is the specific case of the Party No. 1 that the works which were given to the contractor for execution were not of permanent or perennial in nature and the contractor never engaged more than 19 contract labours on any day and as such, there was no need for the contractor to obtain any license and there was never any violation of the Provisions of the Contract Labour (Regulation & Abolition) Act.

It was also submitted by the learned advocate for the Party No. 1 that there is no provision in Contract Labour (Regulation & Abolition) Act stating that in case of violation of the provisions of the said Act, the workmen are entitled for regularization and in absence of such provision, the claim of the workmen is liable to be rejected.

16. On perusal of the documents filed by the parties and the oral evidence on record, it is found that the contractor had never engaged more than nineteen contract labours on any day. According to Section 1 of the Contract Labour (Regulation & Abolition) Act, obtaining of license by a contractor is necessary in case of engagement of twenty or more workmen on any day. There is no legal evidence on record to show that the contractor engaged twenty or more contract workmen on any day.

It is also found from the evidence on record including Ext. M-V and W-5 and W-6 that the works which were

given to the contractor by Party No. 1 on contract were not permanent or perennial nature of work or the said works were prohibited nature of work.

Hence, it can be held that there was no violation of the provisions of the Contract Labour (Regulation & Abolition) Act.

17. Moreover, it is well settled by the Hon'ble Apex Court in a number of decisions including the decisions reported in 1992 I SCC- 695 (Dena Nath Vs National Fertilizers Ltd.), that violation of Sections 7 and 12 by the Principal employer or by the contractor attracts Penal Provision of Sections 23 and 25, but does not have the effect of rendering the contract labour, employees of the Principal employer.

18. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s Food Corporation of India), 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others) and 1994 II CLR 402 (R.K. Panda & Others Vs. Steel Authority of India and Others).

In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that :

> "Briefly stated, when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do …….". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
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> Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 – I – LLJ – 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

19. In the decision reported in 2001 LAB IC – 3656 (supra) the Hon'ble Apex Court have held that:-

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.
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> Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the

workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

20. In the decision reported in 1994 II CLR 402 (Supra), the Hon'ble Apex Court have held that :

With the industrial growth, the relation between the employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein were the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a state Board, prohibit, by notification in the Official Gazette, employment of contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may

contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under Section 16, Section 17, Section 18, or Section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of Section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contact labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the central board or the state board, as the case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the central government or the state government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of Gammon India limited V. Union of India (1974) I SCC 596, pointed out the object and scope of the act as follows:-

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act."

In the case of B.H.E.L. Workers' Association V. Union of India, 1985 I CLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. That has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., 1991 I CLR 684, this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labourers in its employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the contract labourers concerned. Again in Dena Nath V. National Fertilizers Ltd., 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker

employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under Section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the central government or by any appropriate government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Forum to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

21. The next contention raised by the learned advocate for the union is that Party No. 1 has regularized the services of other workers, whose cases were similar to the case of the workmen and the Party No. 1 being a state cannot discriminate between two sets of employees. On perusal of the materials on record including documents, W-7 to 14, it is found that there is no similarity between the case of the workmen and other workers to whom Party No. 1 agreed to employ. In this case, the union never raised the case of the workmen before the management. The union directly raised the dispute before the Conciliation Officer in 1999. Hence, on this ground also, workmen are not entitled for regularization.

22. The last contention raised by the learned advocate for the union is that the discontinuance of the workmen can be termed as retrenchment and as the provisions of Sections 25-B, 25-F and 25-G are not complied, the discontinuance of the workmen is illegal.

As it is already held that the workmen are contract labours, their case cannot be held to be a case of retrenchment from services by the Party No. 1. Hence, there is no force in the contention raised by the learned advocate for the union.

23. As the facts and circumstances of the case in hand as mentioned above are quite different from the facts and circumstances of the cases as referred in the decisions cited by the learned advocate for the union, with respect, I am of the view that the decisions have no clear application to the present case in hand.

24. In view of the materials on record and the discussions made above, it is found that the workmen are not entitled for regularization or any other relief. Hence, it is ordered :

ORDER

The action of the management of Ballarpur Colliery of WCL, PO. Ballarpur, Distt. Chandrapur in not regularizing S/Sh. Laxman Durge & 21 other contract labour (list enclosed) is legal and justified. The workmen are not entitled to any relief.

J. P. CHAND, Presiding Officer

List of Workmen

No. L-22012/191/2000-IR(C-II)

(1)	लक्ष्मण दूर्गे	(12)	शेख बब्बू
(2)	चंद्रकान्त तेलंग	(13)	रमेश मडका
(3)	देवराज निषाद राज	(14)	देविदास डम्बारे
(4)	बापूराव बावणे	(15)	मग्गरू वाघाडे
(5)	संतोष वाघाडे	(16)	मनोज लोखंडे
(6)	सुदाम हजारे	(17)	मूनेन्दर भूमया
(7)	रामचंद्र बावणे	(18)	मिलन हिरालाल
(8)	रमेश बावणे	(19)	क्रिपा राजम
(9)	तिरु वाघाडे	(20)	रमेश रामटेके
(10)	सुरेश मडका	(21)	देवय्या बेन्कया
(11)	अनुप रामटेके	(22)	वेन्कट रामन्ना

नई दिल्ली, 16 जनवरी, 2014

का.आ. 547.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 44/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/29/2007-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 16th January, 2014

S.O. 547.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Saoner Sub Area of WCL, and their workmen, received by the Central Government on 16/01/2014.

[No. L-22012/29/2007-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/44/2007 Date: 16.12.2013

Party No. 1 : The Sub Area Manager,
Saoner Sub Area of WCL,
Taluka Saoner, Nagpur.

V/s.

Party No. 2 : Shri Ghanshyam P. Lonkar,
R/o. Manegaon, Po : Bhansali Tekli,
Tah. Saoner, Distt. Nagpur.

AWARD

(Dated the 16th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri G. P. Lonkar, for adjudication, as per letter No.L-22012/29/2007-IR (CM-II) dated 19.07.2007, with the following schedule:-

> "Whether the action of the management of WCL in dismissing the services of Shri G.P. Lonkar w.e.f. 17.05.2001 is legal and justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Ghanshyam Pandhariji Lonkar, ("the workman" in short) filed the statement of claim and the management of WCL, ("party no.1" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that he is a workman within the meaning of section 2 (s) of the Act and he came to be appointed as a general mazdoor in the year 1982 with party no.1 and he was made permanent in the post of "Trammer" category-III and he worked as a Trammer category-III up to 1989 and then, he was promoted to the post of clerk grade-III and from the date of his such promotion, he worked continuously as a clerk with clean and unblemished service record and no memo or charge sheet was issued against him till the year 1992 and while he was working as clerk grade-III, he suffered from mental ailment and after his recovery from the mental ailment, he was reinstated in service and he resumed his duties w.e.f. 31.12.1994 and worked till 11.04.1999 and he suffered from mental ailment again from 12.04.1999 and as such, he could not able to attend his duties from 12.04.1999 to 24.07.1999 and during the said period, he was admitted in the mental hospital, Nagpur and party no.1 submitted charge sheet dated14.05.1999 (wrongly mentioned as dated 12.04.1999 in the statement of claim by the workman) against him, in which, charges of absenteeism was levelled against him and he submitted his reply to the charge sheet stating the reason of his remaining absent from duties from 12.04.1999 to 24.07.1999, but despite of the same, party no.1 constituted the enquiry committee and conducted the enquiry and he submitted the prescription and medical certificates regarding his medical treatment, but the same were not considered and party no.1 issued the order of his dismissal from services on 17.05.2001. It is also pleaded by the workman that after his discharge from the mental hospital, Nagpur, he was allowed by party no.1 to resume his duty w.e.f. 01.04.1999 and he continued to work till 17.05.2001, the date of his dismissal from services and his absence from duty was for the bonafide reason of mental ailment, which does not come within the meaning of misconduct and as such, the charge sheet issued against him was illegal, baseless and against the principles of natural justice and the same is liable to be set aside and though he made representation to consider his case sympathetically, by taking by taking into consideration his past record and loyal service, no heed was paid to the same by party no.1 and the punishment of dismissal from services imposed against him is highly disproportionate and he is entitled for reinstatement in service with continuity and full back wages.

3. In the written statement, it is pleaded by party no.1 inter-alia that the workman was a habitual absentee from duties, without any intimation to the concerned authority and he never used to take prior approval for leave from concerned authority and he remained absent from duties from 12.04.1999 to 24.07.1999, without any information to the concerned authority and therefore, it was constrained to issue the charge sheet dated 14.05.1999 against the workman and no charge sheet was submitted against him on 12.04.1999 as claimed by him. It is further pleaded by party no.1 that the workman became irregular in his duty from the year 1991 and remained absent without intimation and therefore, vide letter dated 09.07.1999, he was given last opportunity to work as clerk grade-III, but inspite of the same, the workman was irregular in his duty, so vide letter dated 11.10.1991, he was demoted as Trammer cat. III and inspite of such demotion, the workman remained absent from duty without giving any information and because of such irresponsible act of the workman, its work was affected and it faced many problems to manage the work and therefore, after issuing charge sheet and conducting of domestic enquiry, the workman was dismissed from service vide letter dated 07.12.1991 and on the basis of settlement arrived at before the Asstt. Labour Commissioner (C), the workman was reinstated as Badli time rated w.e.f. 26.12.1994 and he was regularized as General Mazdoor cat-I w.e.f. 01.01.1996 and the workman was placed as clerk grade-III in initial basic w.e.f. 01.08.1996 after considering his case sympathetically and taking undue advantage of its sympathetic attitude, the workman again remained absent continuously from duty for the period from 12.04.1999 to 24.07.1999 without informing the concerned authority and committed misconduct as per the Standing Order, so charge sheet dated 14.05.1999 was issued against him and the workman submitted his reply to the charge sheet on 19.07.1999, after the time specified in the charge sheet and as the reply of the workman was not satisfactory, it was decided to conduct departmental enquiry and by order dated 24.07.1999, Shri G.K. Kamble, was appointed as the enquiry officer to conduct the enquiry and the enquiry officer after issuing notice to the workman fixed the enquiry on 30.07.1999 and the workman appeared in the enquiry and participated in the enquiry and on 20.08.1999, the workman presented fitness certificate of company's dispensary dated 08.07.1999 to 16.07.1999 and fitness certificate given by a private doctor and those certificates were not for mental ailment and the same were also not issued by the Mental Hospital, Nagpur and the workman on 20.08.1999 accepted the charges levelled against him and all the opportunities as per the principles of natural justice were given to the workman to defend himself in the enquiry and the enquiry was completed on 20.08.1999 and the workman during the period of absence i.e. 12.04.1999 to 24.07.1999 did not submit any leave application and in the enquiry also, the workman did not produce any relevant document to show that he was suffering from mental ailment and taking into consideration the past record of the workman and the report of the enquiry officer, the competent authority had no other choice than to dismiss the workman and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from service, after holding of a departmental enquiry, the question of the fairness or otherwise of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 25.09.2013, the enquiry held against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that initially the workman was appointed as a general mazdoor in the year 1982 and he was made permanent as a trammer and then he was promoted as a clerk grade III and in the year 1992, while he was working as a clerk grade III, he suffered from mental illness and after his recovery from mental ailments, he was reinstated in service and he resumed his duties w.e.f. 31.12.1994 and worked till 11.04.1999 and the workman again suffered from mental ailment on 12.04.1999 and as such he could not able to attend his duties from 12.04.1999 to 24.07.1999 and during the said period, he was admitted in the mental hospital, Nagpur and the party No. 1 submitted a charge sheet against the workman for absenteeism for the said period and even though the workman submitted his reply stating the reason for remaining absent from duty, the party No. 1 conducted the enquiry against the workman and the workman submitted the prescription and the medical certificates regarding his medical treatment, but the same were not considered by the Enquiry Officer and as the Enquiry Officer did not consider the documents produced by the workman, it can be said that his findings are not based on the evidence on record and therefore perverse. It was further submitted by the learned advocate for the workman that the absence of the workman was not case of without sufficient cause and his absence from duty was for the bonafide reason of mental ailment, which does not come within the meaning of misconduct and the punishment of dismissal from services imposed against the workman is highly disproportionate and the same is liable to be set aside and the workman is entitled for his reinstatement in service with continuity and full back-wages.

6. Before delving into the merit of the matter, I think it proper to mention the principles as settled by the Hon'ble Apex Court in catena of decisions regarding the power and jurisdiction of the Tribunal in the matter of interference with the findings and punishment imposed in departmental proceedings. It is well settled by the Hon'ble Apex Court that :

> "The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be

equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

So, keeping in the principles as mentioned above, now, the case in hand is to be considered.

7. As already mentioned above, the case of the workman is that the prescriptions and medical certificates produced by him were not considered by the Enquiry Officer and as he suffered from mental ailment and was admitted in Mental hospital, Nagpur for his treatment, he could not able to attend his duties from 12.04.1999 to 24.07.1999. On perusal of the enquiry report submitted by the Enquiry Officer, it is found that the Enquiry Officer had taken into consideration the documents produced by the workman in his defence.

8. On perusal of the documents on record, it is found that in the show cause to the charge sheet, the workman has mentioned that on 12.04.1999, he was ill and on 14.04.1999 his daughter became ill and she was treated in the hospital till 20.04.1999 and on 28.04.1999, his wife became ill and she was admitted in the hospital and then he remained busy in the marriage ceremony of his sister and on 06.06.1999, his son expired and for that he could not able to attend his duties from 12.04.1999.

So far the medical certificates and other documents filed by the workman are concerned, on perusal of the same, it is found that the claim of the workman that he was mentally ill from 12.04.1999 to 24.07.1999 and was under medical treatment at mental hospital, Nagpur is not at all true. Ext. W-Iii is a medical certificate relating to the period from 25.09.1999 to 16.10.1999 and the same does not relate to the relevant period. The other documents also do not relate to the period in question. The workman has filed the medical certificate issued by the private doctor, Dr. Ravindra of Saoner dated 03.07.1999. On perusal of the said certificate, it is found that the same was a certificate about the workman suffering from "Fissure" and "Fistula" from 11.04.1999 to 03.07.1999 and not for any mental ailment as claimed by the workman. The workman has not filed a single document to show that he was suffering from mental ailment from 12.04.1999 and he was admitted in Mental Hospital, Nagpur and for that he was unable to attend duties from 12.04.1999 to 24.07.1999. Hence, there is no force in the contention raised by the learned advocate for the workman that the findings of the Enquiry Officer are not based on the evidence on record of the enquiry and the same are perverse.

9. So, far the proportionality of the punishment is concerned, is to be mentioned that grave misconducts of habitual absenteeism and unauthorized absence from duty have been proved against the workman in a properly conducted departmental enquiry. The punishment of dismissal of the workman therefore cannot be said to be shockingly disproportionate, so as to call for interference. So, there is no scope for interference with the punishment imposed against the workman. Hence, it is ordered :

ORDER

The action of the management of WCL in dismissing the services of Shri G.P. Lonkar w.e.f. 17.05.2001 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 जनवरी, 2014

का.आ. 548.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 31/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/57/2013-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 16th January, 2014

S.O. 548.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Limited, and their workmen, received by the Central Government on 16/01/2014.

[No. L-22012/57/2013-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/31/2013 Date: 16.12.2013

Party No. 1 : The Director (Personnel),
Western Coalfields Limited,
Coal Estate, Civil Lines,
Nagpur: 440001

Versus

Party No. 2 : The President,
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC), 604,
Giripeth, Nagpur : 440010

AWARD

(Dated : 16th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and the union, Rashtriya Koyla Khadan Mazdoor Sangh (INTUC) for adjudication, as per letter No.L-22012/57/2013-IR (CM-II) dated 30.05.2013, with the following schedule :

> "Whether the action of the management of Western Coalfields Limited, HQ, Nagpur in transferring Shri S.B. Lade, Telecom Mechanic, Grade 'D' from Ballarpur Area to Umrer Area and from Unrer Area to Nagpur H.Q. at a grade lower on accepting their request for transfer to Nagpur H.Q. or Unrer Area, is just, fair or legal? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due.

The notice sent to the union (petitioner) by RPAD was served personally on the President and service of notice on him was held to be sufficient.

The management of WCL appeared through their advocate, Smt. Pushpalata Ranjan.

Inspite of adjourning the case thrice for filing of statement of claim by the petitioner, the petitioner neither appeared nor filed any statement of claim. So, on 16.12.2013, the reference was closed, holding that the petitioner was not interested to proceed with the reference and the reference was fixed for award.

3. It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the petitioner has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered :

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 जनवरी, 2014

का.आ. 549.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 30/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/44/2013-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 16th January, 2014

S.O. 549.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Durgapur Rayatwari Colliery and their workmen, received by the Central Government on 16/01/2014.

[No. L-22012/44/2013-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/30/2013 Date: 16.12.2013

Party No. 1 : The Sub Area Manager,
Durgapur Rayatwari Colliery,
Chadrapur Area of WCL,
Post : Rayatwari,
Teh. & Distt. Chandrapur (MS)

Versus

Party No. 2 : The General Secretary,
Rashtriya Colliery Mazdoor Congress,
Dr. Ambedkar Ward, Ballarpur,
Post: Ballarpur,
Distt. Chandrapur (MS)

AWARD

(Dated : 16th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Durgapur Rayatwari Colliery and the union, Rashtriya Colliery Mazdoor Congress for adjudication, as per letter No. L-22012/44/2013-IR (CM-II) dated 29.05.2013, with the following schedule :

"Whether the action of the management of Durgapur Rayatwari Colliery of Chandrapur Area, Western Coalfields Limited in denying employment to Shri Janardanrao the dependent son of Shri Y. Chandrayya, who has already put in 37 years service, which is contrary to the provisions of para 9.4.4 of NCWA is legal and justified? If not, to what relief the workman entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due.

The notice sent to the union (petitioner) by RPAD was served personally on the General Secretary and service of notice on him was held to be sufficient.

The management of WCL appeared through their advocates, Shri B.N. Prasad and Shri S.T. Sahasrabudhe.

Inspite of adjourning the case thrice for filing of statement of claim by the petitioner, the petitioner neither appeared nor filed any statement of claim. So, on 16.12.2013, the reference was closed, holding that the petitioner was not interested to proceed with the reference and the reference was fixed for award.

3. It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the petitioner has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered :

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 जनवरी, 2014

का.आ. 550.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 141/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/197/2002-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 16th January, 2014

S.O. 550.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 141/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Hindustan Lalpeth Open Cast Sub Area of WCL and their workmen, received by the Central Government on 16/01/2014.

[No. L-22012/197/2002-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/141/2003 Date: 20.09.2013

Party No.1 : The Sub Area Manager,
Hindusthan Lalpeth Open Caste
Sub Area of WCL, Post:- Lalpeth,
Distt.- Chandrapur (MS).

Party No.2 : Shri Chandrakant Khandre,
General Secretary,
Koyala Shramik Sabha (HMS),
Br. Chandrapur area,
C/o. C.G. Khadre, Near Mahakali
Mandir, Po & Distt. Chandrapur (MS).

AWARD

(Dated: 20th September, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in

short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Sheikh Ejaj Ahmad Sheikh Siraj for adjudication, as per letter No. L-22012/197/2002-IR (CM-II) dated 09.05.2003, with the following schedule:-

> "Whether the action of the management in relation to Hindustan Lalpeth Open Cast of Western Coalfields Ltd., in dismissing Sh. Sheikh Ejaj Ahmad Sheikh Siraj, Driver, Hindustan Lalpeth Open Cast Vide order no. WCL/CHA/PO/HLOC/ PER/1840 dated 04.07.1998 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union, "Koyala Sharmik Sabha(HMS)", ("the union" in short) filed the statement of claim, on behalf of the workman, Shri Sheikh Ejaj Ahmad Sheikh Siraj, ('the workman" in short), and the management of WCL, ("Party No. 1" in short) filed their written statement.

In the statement of claim it was pleaded on the behalf of the workman that the enquiry proceedings initiated against the workman was illegal and the dismissal of the workman from services was also not legal and the workman is entitled for reinstatement in service with full back wages and all consequential benefits alongwith continuity in service.

3. The party no.1 filed the written statement denying the allegations made in the statement of claim and pleading inter-alia that the domestic enquiry had been held against the workman in accordance with the principles of natural justice and there was no illegality in conducting the departmental enquiry and the workman is not entitled for any relief.

4. It is to be mentioned here that as this is case of dismissal of the workman after holding a departmental enquiry, a preliminary issue regarding the fairness or other wise of the departmental enquiry was framed for consideration and parties were allowed to plead evidence on the preliminary issue. Accordingly, the workman examined himself as a witness and thereafter closed the evidence from his side. The case was posted to 20.09.2013 for adducing evidence from the side of the management on the validity of the departmental enquiry and management filed the affidavit of witness, Shri Ramesh Hanumantrao Dingalwar.

The workman appeared in person alongwith his advocate on 20.09.2013 and filed an application alongwith an affidavit to close the case as withdrawn on the ground that he will take up the matter with the party no.1 for amicable negotiation and settlement. Copy of the application was served on the advocate for the party no.1, who made endorsement on the application itself of "No Objection".

4. As the workman doesn't want to proceed with the reference, the reference is liable to be dismissed without granting of any relief to him. Hence, it is ordered:-

ORDER

The reference is dismissed as not pressed by the workman. The workman is not entitled to any relief. No leave is also granted to the workman to raise the dispute again or to revive the present reference. The applications and affidavit filed by the workman are made part of the award.

J. P. CHAND, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 551.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एमसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 83/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/171/2012-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 551.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/ 2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Mahanadi Coalfields Limited, At/Po : Jagruti Vihar and their workmen, received by the Central Government on 17/01/2014.

[No. L-22012/171/2012-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present :

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 83/2012

Date of Passing Award – 17th December, 2013

Between:

The Chairman and Managing Director,
Mahanadi Coalfields Limited,
At./Po. Jagruti Vihar, Burla,
Sambalpur, Orissa-756 020

...1st Party-Management

(And)

The Divisional Secretary,
Indian National Mines Official & Supervisory Staff Association (INMOSSA), MCL Zone, At. Central Colony, Sector – 16, Block-06, Po. Balanda, Dist. Angul, Talcher, Orissa – 759 116

...2nd Party-Union.

Appearances :

None ...For the 1st Party-Management

Shri S. Choudhury ...For the 2nd Party-Union
Dy. General Secretary

AWARD

The Government of India in the Ministry of Labour has referred an Industrial dispute existing between the employers in relation to the management of Mahanadi Coalfields Limited, At./Po. Jagruti Vihar and their workmen in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act vide its letter No. L-22012/171/2012 – IR(CM-II), dated 11.09.2012 in respect of the following matter :

> "Whether INMOSSA Association can raise industrial dispute in respect of their association members who are drawing more than Rs. 10,000/- PM as Supervisory staff? Whether 17 point charter of demands submitted by the Association dated 16.08.2010 is legal and justified on the disputes which are deemed to be industrial disputes as per the provisions of I.D. Act and do not fall under the ambit of the present IR system in the decision making process of MCL, is legal and justified? What relief the concerned association is entitled to?"

2. The 2nd Party-Union filed its statement of claim enclosing therewith a 17 point charter of demands submitted to the 1st Party-Management and stated that the charter of demands was placed before the Management on 16.8.2010. On some of the demands discussions were held with the Management and on some of the demands no talks were held. The Regional Labour Commissioner (Central), Bhubaneswar has also discussed on the demands with the company-Management and requested the Management to fulfill them. But the demands have not been fulfilled till date. Hence a request has been made to pass a written award on these demands. The minutes of the meeting held between the representatives of the 2nd Party-Union and the Management in the office of the Deputy Chief Labour Commissioner (Central), Bhubaneswar on 17.9.2010 has also been filed.

3. Despite sending notice to the 1st Party-Management none appeared on its behalf and failed to file any written statement to the statement of claim. Hence the case was set exparte against the 1st Party-Management vide order dated 11.6.2013.

4. On being given the opportunity to adduce evidence in support of its claim the 2nd Party-Union declined to give any evidence on the pretext that the witnesses are not ready to give evidence in the case due to pressure tactics adopted by the Management.

5. The Union representative urged to pass award in the case on the basis of documents available on record.

6. There are two points involved in this case on which decision is to be given. First is that whether INMOSSA Association can raise an industrial dispute in respect of their association members who are drawing more than Rs. 10,000/- per month as supervisory staff.

7. Before taking up the second point of dispute it will be appropriate to take up the first point. The Industrial Disputes Act, 1947 provides for adjudication and settlement of an industrial dispute which means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. Apparently the present dispute relates to a dispute between the association members of INMOSSA and the Management of Mahandi Coal Fields Limited. The association members are the workmen of the MCL. The definition of workman has been provided under clause (s) of Section 2 of the Industrial Disputes Act, 1947. The definition of workman under the above clause excludes any such person who is employed in a supervisory capacity and draws wages exceeding Rs. 10,000/- per mensum.

8. In view of the above provision the members of INMOSSA who are drawing wages of more than Rs. 10,000 per month as supervisory staff cannot raise any dispute through INMOSSA Association or any other union under the Industrial Disputes Act, 1947 because they cannot be categorized as workmen. This part of the dispute as raised is decided against the 2nd Party-Union.

9. The second part of the dispute raises an issue as to whether 17 point charter of demands submitted by the Association dated 16.8.2010 which are deemed to be industrial disputes as per the provisions of I.D. Act and do not fall under the ambit of the present I.R. system in the decision making process of MCL is legal and justified.

10. The minutes of the meeting held between the representatives of the Management and the 2nd Party-Union at the office of the Deputy Chief Labour

Commissioner (Central), Bhubaneswar on 17.9.2010 deals with each of the demands raised by the 2nd Party Union and the stand taken by the Management and also the views of the Assistant Labour Commissioner (Central) on them. The stand taken by the Management is that since INMOSSA is not covered under their industrial relation system, structured meetings with this Association cannot be held. The Unions which are covered under their industrial relation system are only represented in various committees and joint forums. INMOSSA being non-covered Union under I.R. System it cannot represent in such committees and no accommodation can be provided to it. The statutory requirements are being complied with and all safety measures are being taken by providing safety equipments of D.G.M.S. certification. The detailed version is given in the minutes of the meeting.

11. The demands raised by the 2nd Party-Union in their charter of demands may be a cause of industrial dispute and can be said to be legal and justified, but they cannot be adjudicated by this Tribunal as the association members of IMMOSSA are not covered under the definition of workmen. Therefore the present dispute cannot be said to be a dispute between the employers and the workmen and as such does not constitute an industrial dispute under the Industrial Disputes Act, 1947. The demands raised under the 17 point of charter of demands whether can be deemed to be an industrial dispute or fall under the ambit of the present I.R. system in the decision making process of M.C.L. cannot be decided either way for want of any pleadings of the parties. Therefore the second point of dispute is left undecided.

12. Under the above circumstances the INMOSSA Association is not entitled to any relief from this Tribunal.

13. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 552.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 301/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/278/2003-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 552.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 301/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 17/01/2014.

[No. L-22012/278/2003-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/301/2003 Date: 6.2.2013

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai-400020

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena,
Hind Nagar Ward No. 2,
Near Boudha Vihar,
Post : Wardha,
Distt. Wardha (M.S.)

AWARD

(Dated : 6th February, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Kuresh S. Bhramhavanshi, for adjudication, as per letter No. L-22012/278/2003-IR (CM-II) dated 08.12.2003, with the following schedule :

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Kuresh S. Bhramhavanshi, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Kuresh S. Bhramhavanshi ('the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 20.07.1993 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period for two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 20.07.1993 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party no. 1 is that for the relief as claimed, by the workman had filed a writ petition before

the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon 'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party no. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that he was engaged by the contractor and the contractor left him to the FCI and FCI had not given any advertisement for the said post and he does not know the name of the contractor and no appointment order was given to him, either by the contractor or the FCI and he has not filed any document to show that salary was paid to him by FCI and he cannot say for how many years he served in FCI and no termination order was issued by FCI and Mr. Bokade terminated him orally and initially, he was getting Rs. 700 as salary, but he cannot say the break-up of his salary, such as basic, DA and other allowances and he has not filed any document to show that he served with FCI from 1993 to 1999. The workman has admitted that he was appointed through Singh Securities Services.

5. Shri Suresh N. Bokade, the witness examined on behalf of the party no. 1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has stated that he has no knowledge if FCI had obtained any license from the competent authority for engagement of contract labours in FCI. The witness has admitted that the workman was working from 1993 in FCI and he was engaged for watch and ward of go-downs and the workman and 12 other workmen were keeping watch on the incoming and outgoing vehicles to and from FCI go-downs and the contractor engaged by FCI to supply contract labourers had the required license for the same, but copy of such license was not filed and the process of engagement of contractors was done by the Regional Office of FCI and he has no personal knowledge about the details of the process of engagement of knowledge about the detail of the process of engagement of contractors and during the general election to the Parliament, FCI had submitted the names of the workman and 12 others in the list of employees submitted to the collector. This witness has denied the suggestions that the workman and 12 others were appointed by the FCI for watch and ward of the go-downs of FCI at Wardha in 1993 that the FCI was maintaining the attendance register of the workmen. The witness has further stated that payment of wages to the workman was being done through the contractor as per the minimum wages fixed by the Government and FCI was not making any deduction from the said wages towards PF and ESI and FCI was not maintaining any duty register or salary register for the workman and the concerned Asstt. Manager and Assistants were verifying the supply of labourers by the Contractor and the contractor was submitting monthly bills for supply of labours and the workman was on duty from 1993 to 1999 in FCI.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was engaged by the management of FCI on 20.07.1993 at Wardha depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the party no.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wage in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the

workman, fresh hands were engaged by party no.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the learned advocate for the workman that the party no.l had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the party no.1 and he was never a contract labour and such action of the party no.l was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was also submitted by the learned advocate for the workman that party no.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the party no.1 that the workman was never appointed by party no.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party no.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of party no.1 complying with the due procedure of termination and there was no relationship of master and servant between the party no.1 and the workman and the party no.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party no.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party no.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon 'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the party no.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order :

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> XX XX XX XX
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence,

the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party no. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party no. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the party no. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and party no. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon 'ble Apex Court regarding contract labours, in the two decisions reported in 1985-II LW-4 (S.C.) (The workman of the Food Corporation of India Vs M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others).

In the decision reported m 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that :

> "Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
>
> Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon 'ble Apex Court have held that :

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the

consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori 'much less can such a relationship be found to exist from the rules and the forms made thereunder."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

12. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed. by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labour contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits thereunder. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

13. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered :

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 553.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एमसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 01/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 553.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar (Ref. No. 01/2011) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of MCL, and their workmen, which was received by the Central Government on 17/01/2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava, Presiding Officer
C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 1/2011

Date of Passing Order – 22nd November, 2013

Between :

1. The C.M.D., MCL, Burla.
2. The Director (P), MCL, Burla.
3. The C.V.O., MCL, Burla.
4. The General Manager, Lingaraj Area, At./Po. Deulbera Colliery, P.S. Talcher, Dist. Angul, (Orissa),
5. The General Manager, Hingula Area, At. Balram Township, Po. N.S. Nagar, Bharatpur Colony, Dist. Angul, (Orissa)-759 148

...1st Party-Managements

(And)

Their workman Shri B. Mahabhoi, Sr. P.A.
Represented through Jt. General Secretary,
TCMEU (AITUC), At. Qr. No. A/121,
P.O. NS Nagar, Bharatpur Colony,
Dist. Angul (Orissa) Pin – 759 148

...2nd Party-Workman

Appearances :

None	…	For the 1st Party-Managements.
Shri B. Mahabhoi	…	For Himself the 2nd Party-Workman.

AWARD

The dismissed employee Shri B. Mahabhoi has filed this petition before this Tribunal/Labour Court under section 2-A of the Industrial Disputes Act, 1947 against the C.M.D. of MCL, Burla and four others for setting aside the dismissal order passed by the General Manager, Lingaraj Area on 1.3.2009 and his reinstatement in service with full back wages.

2. The allegations of the workman in short are that he was working as Senior P.A. to the General Manager, Hingula Area. While he was working in Kalinga Area now known as Hingula Area he was asked to issue the requisition slips for drawing petrol from the petrol pump, namely M/s. D. Sahoo & A. Sahoo, Talcher to the drivers of Headquarter vehicles coming on tour to Talcher with Headquarter officers as per the direction of the General Manager/Chief General Manager. At the time of issuing such slips Shri Mahabhoi was mentioning on the back side of the slips the vehicle number, the authority of the vehicle, the quantity required and was taking signatures of the concerned drivers therein to produce before the pump for giving petrol. Thereafter the drivers used to take the petrol from the pump by submitting these original foils and duplicate foils at their own. The original foil was supposed to be submitted along with the credit memos for billing and payment and the duplicate foil was supposed to be retained by the petrol pump for record. The drivers submit the slips and sign on the credit memos as prepared by the owner after issue. The petrol pump owner produces

the credit memos mentioning therein the name of the vehicle to whom petrol was issued, quantity of petrol issued and the amount so due and takes the signature of the driver on the same bill. Then he submits the bill to the Area Personnel Manager, Kalinga Area for processing the bill, who sends the same to the A.F.M. for passing and paying the amount. From the stage of passing and to the stage of payment Shri Mahabhoi never takes any part. In the month of June, 2003 the A.F.M. through A.P.M. wanted to know the names and authority of those vehicles from Shri Mahabhoi as to his signatures on slips for which claim have been made from March, 2003 to August 2003 by the petrol pump owner. At that time Shri Mahabhoi could know some irregularities on those bills which have been produced on his false signatures. He reported the matter to the Chief General Manager, who intimated to the CVO, MCL, Burla. The CVO conducted a preliminary enquiry and a clarification was sought from Shri Mahabhoi, who clarified the position. In the meantime Shri Mahabhoi was transferred to Lingaraj Area on 8.3.2004.

3. In the month of Sept. 2004, the General Manager of Lingaraj Area issued a charge-sheet to Shri Mahabhoi who sent a reply to him on 22.9.2004. Thereafter the General Manager, Lingaraj Area appointed an enquiry committee nominating Shri A.K. Sahay, Deputy C.E. (Excv.)/Area Training Officer as enquiry officer. Shri Mahabhoi participated in the enquiry proceedings with a co-worker. During the enquiry proceeding Shri Mahabhoi requested the Enquiry Officer and the General Manager (LA) to supply him all the 132 numbers of the disputed original folios to tally with the duplicate foils on the basis of which payment was made to the petrol pump owner. Shri Mahabhoi also requested to call for the petrol pump owner and hand writing expert as witnesses in the enquiry proceedings through the Management representative. But the enquiry officer failed to call them. Shri Mahabhoi also wanted to seek the opinion of the Government hand writing expert to which the General Manager agreed vide his letter No. 297, dated 05.07.2006, but they could not produce the same till the end of the enquiry proceedings. Shri Mahabhoi had earlier approached the Hon'ble High Court of Orissa who directed the Management vide its order dated 2.6.2006 to supply all the documents. The General Manager, Lingaraj Area although assured to supply all the required documents and to obtain the second opinion from the Government organization, yet the Management Representative or the Enquiry Officer failed to supply the same. During the 54th Enquiry Sitting held on 16.6.2008 Shri Mahabhoi requested the Enquiry Officer to examine the Management representative, but the Enquiry Officer did not permit the management representative for his examination, but closed the enquiry. The Enquiry Officer denied all sufficient opportunities to Shri Mahabhoi to defend the case and thus he was denied natural justice. Shri Mahabhoi during the enquiry proceedings also brought to the notice of the Enquiry Officer about erasing of the triplicate-foils into hand written duplicate-foils and the fact that petrol was issued before one month of issue of requisition slips/foils and also after two months. The Enquiry Officer had not taken all these matters into consideration which were pointed out to him by Shri Mahabhoi and written his findings in a biased manner without applying his mind and mentioning the specific reasons thereof. The Enquiry Officer did not supply the typed copy of his findings and the copy supplied to him was hand-written which was not legible. The Management in disregard of the order of the Hon'ble High Court of Orissa signed the termination order on 1.3.2009 being Sunday which was antedated to make the said order infructuous. For all these reasons the workman has prayed to set aside the dismissal order and to reinstate him in his post with back wages.

4. The 1st party-Management No. 1 to 5 appeared before this Tribunal/Labour Court and moved a petition for engagement of Advocate. Objection on behalf of the workman was filed and upon hearing both the parties the petition of the 1st Party-Management was rejected vide order dated 14.10.2011. Thereafter the 1st Party-Management No. 1 to 5 preferred to remain absent in the proceedings of the case and did not file any written statement. Hence the case was set exparte against them.

5. The workman Shri Bholeswar Mahabhoi has filed his affidavit in evidence along with certain annexures.

6. After having gone through the sworn affidavit of Shri Bholeswar Mahabhoi and perusing the documents filed on record it comes out that the allegations raised by the 2nd Party-workman in his claim statement are true. The documents which were the basis of the charge-sheet were not supplied to the 2nd Party-workman during the enquiry proceedings even after repeated demands by him. The hand writing expert who examined the disputed documents was also not examined. Hence his report without being proved cannot be made basis of any conclusion. The petrol pump owner was also not examined in evidence and it could not be made clear as to how the 2nd Party-workman was involved in the charges levelled against him. Repeated requests were made to call for the hand writing expert and the petrol pump owner to be produced in evidence, but the request was not heeded to. Therefore it is apparent that the dismissal order of the disputant workman was passed without affording him sufficient opportunity to defend his case and thus the principles of natural justice were violated by the enquiry officer in conducting the enquiry. Moreover, the appellate authority has remitted the case back to the disciplinary authority for denovo enquiry into the charges framed against Shri B. Mahabhoi vide order dated 1.10.2011. Copy of the appellate order has been filed as Annexure-9 to his affidavit. In this view of the matter the dismissal order passed against the

2nd Party-workman has becomes infructuous and non-existent. Consequently this case has been filed at a premature stage and no orders need to be passed in the matter.

7. The case is disposed of accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 554.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ सी आई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 262/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/164/2003-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 554.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 262/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 17/01/2014.

[No. L-22012/164/2003-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/262/2003 Date: 6.2.2013

Party No. 1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur-440015

Party No. 1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha Road, Churchgate,
Mumbai-400020

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena,
Hind Nagar Ward No. 2,
Near Boudha Vihar,
Post : Wardha,
Distt. Wardha (M.S.)

AWARD

(Dated : 6th February, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Rajesh Yadaorao Warkhade, for adjudication, as per letter No. L-22012/164/2003-IR (CM-II) dated 08.12.2003, with the following schedule :

> "Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Rajesh Yadaorao Warkhade, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Rajesh Yadaorao Warkhade ('the workman" in short), filed the statement of claim and the management of Food Corporation of India ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No. 1 from 20.07.1993 and he was initially engaged through a contractor at Wardha Depot of Party No. 1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No. 1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in colourable exercise of the rights and powers by the Party No. 1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No. 1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1993, he was engaged by the Party No. 1 through the contractor for a period for two years, but the contract was made only on papers and after every two years, the Party No. 1 changed the contractor on papers only and the engagement of the so-called contractor did not replace

the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually he was working under the direct control and supervision of the Party No. 1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No. 1 and he was a regular employee of Party No. 1 and Party No. 1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No. 1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No. 1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No. 1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No. 1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No. 1 was supervising his work through their officers and he had no relation with the so called contractors engaged by the Party No. 1 and Party No. 1 also supplied the articles, such as, torch, lathi, whistle and uniform etc to him and in view of the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No. 1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 14.10.1993 to14.03. 1999 , without any break in service and the workman did not complete 240 days of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship of master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violation of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their go-downs are filled with food grains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of party no. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the security agency and he was never their employee and the security contractor was the employer of the workman.

The further case of party no. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation and Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contact given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the directions given by the

ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc to the workman and as such, the workman is not entitled to any relief.

4. It appears from record that in support of his case, though the workman filed his evidence on affidavit, he did not appear for his cross-examination. As the evidence of the workman has not been tested by way of cross-examination, the same cannot be considered.

5. Shri Suresh N. Bokade, the witness examined on behalf of the party no. 1 has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, this witness has stated that he has no knowledge if FCI had obtained any license from the competent authority for engagement of contract labours in FCI. The witness has admitted that the workman was working from 1993 in FCI and he was engaged for watch and ward of go-downs and the workman and 12 other workmen were keeping watch on the incoming and outgoing vehicles to and from FCI go-downs and the contractor engaged by FCI to supply contract labourers had the required license for the same, but copy of such license was not filed and the process of engagement of contractors was done by the Regional Office of FCI and he has no personal knowledge about the details of the process of engagement of knowledge about the detail of the process of engagement of contractors and during the general election to the Parliament, FCI had submitted the names of the workman and 12 others in the list of employees submitted to the collector. This witness has denied the suggestions that the workman and 12 others were appointed by the FCI for watch and ward of the go-downs of FCI at Wardha in 1993 that the FCI was maintaining the attendance register of the workmen. The witness has further stated that payment of wages to the workman was being done through the contractor as per the minimum wages fixed by the Government and FCI was not making any deduction from the said wages towards PF and ESI and FCI was not maintaining any duty register or salary register for the workman and the concerned Asstt. Manager and Assistants were verifying the supply of labourers by the Contractor and the contractor was submitting monthly bills for supply of labours and the workman was on duty from 1993 to 1999 in FCI.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was engaged by the management of FCI on 14.10.1993 at Wardha depot as a security guard and he worked continuously without any interruption till 14th March,1999 and his services were terminated orally by the party no.1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wage in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by party no.1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the learned advocate for the workman that the party no.l had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the party no.1 and he was never a contract labour and such action of the party no.l was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was also submitted by the learned advocate for the workman that party no.1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

7. Per contra, it was submitted by the learned advocate for the party no.1 that the workman was never appointed by party no.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and inspite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the party no.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of party no.1 complying with the due procedure of termination and there was no relationship of master and servant between the party no.1 and the workman and the party no.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security

contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home guards and Police personnel were appointed as security guards and party no.1 has no control over the workman and the security contractor was submitting bills for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the party no.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

8. First of all, I will take up the submission made by the learned advocate for the party no.1 that the present reference is hit by the principles of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" filed Writ Petition no. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief. On perusal of the order passed by the Hon'ble High Court on 29.07.2002 in the said writ petition, it is found that the workman and others claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have became workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order :

> "In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union water front workers and others [reported in 2001 (7) SCC1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.
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> XX XX XX XX
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> In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon 'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. Hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the party no. 1.

9. In this reference, it is never the case of the workman that he was directly appointed or engaged by the party no. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Wardha as a security guard, through a contractor. In paragraph 4 of the statement of claim, the workman has mentioned that, "In the year 1993, the workman was engaged by the Food Corporation of India through contractor, for the period of 2 years, but the contract was made on paper." The case of the workman is that after every two years, the party no. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on 01.11.1990 to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and party no. 1 implemented such direction at Nagpur and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and Manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the Labour Laws.

From the evidence on record and the own admission of the workman in the cross-examination including the specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services, it is clear that the workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

10. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the two decisions reported in 1985-II LW-4 (S.C.) (The workman of the Food Corporation of India Vs M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others).

In the decision reported in 1985-II LLOJ-4 (supra) the Hon'ble Apex Court have held that :

> "Briefly stated, when corporation engaged a contractor for handling foodgrain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do .....". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
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> Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957-I-LLJ- 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

11. In the decision reported in 2001 LAB IC - 3656 (supra) the Hon 'ble Apex Court have held that :

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.
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> Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.
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> Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Born), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori 'much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

12. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No. 1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed. by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No. 1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F or 25-H of the Act.

13. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered :

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 555.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एमसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 01/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/312/2007-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 555.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 01/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Mahanadi Coalfields Limited, and their workmen, received by the Central Government on 17/01/2014.

[No. L-22012/312/2007-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 1/2008

Date of Passing Award – 19th November, 2013

Between:

The General Manager, Talcher Area,
M/s. Mahanadi Coalfields Limited,
Po. Dera Colliery, Dist. Angul, Orissa.

...1st Party-Management.

(And)

Their workman Shri Ajit Kumar Deb,
S/o. Late Suresh Chandra Samant,
At. Samant Quarter, Po. Talcher Town,
Dist. Angul, Orissa.

...2nd Party-Workman.

Appearances :

Shri P.K. Mahapatra, Senior Manager.	...	For the 1st Party-Management.
Shri Ajit Kumar Deb.	...	For Himself the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of M/s. Mahanadi Coalfields Limited and their workman in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide their Letter No. L-22012/312/2007 – IR(CM-II) dated 03.01.2008 in respect of the following matter :

> "Whether the action of the management of M/s. MCL in terminating the services of Sri A.K. Deb w.e.f. 23.02.2007 is legal and justified? If not, to what relief is the workman entitled?"

2. The 2nd Party-workman filed his statement of claim and alleged that he was appointed on 23.10.1990 as Loader by the General Manager, Talcher, Unit-I, Dera Colliery in the district of Angul. He had put in ten years service. Since he had been suffering from illness with effect from 16.1.2004, his wife sent a letter to the grievance cell, Chief General Manager, Talcher Area MCL, Talcher requesting him to transfer her husband from Dera Underground Mines to Hingula Open Cast Mines on health ground. He filed a petition dated 26.12.2005 before the Regional Labour Commissioner (Central), Bhubaneswar regarding his illegal termination. He also attended the joint discussion held on 2.8.2006. In the said meeting/first discussion it was agreed that the 2nd Party-workman will continue his job without any absence. Before the discussion held as above, he was charge-sheeted by the Project Officer, Talcher Colliery on 17.3.2005 for absenting himself habitually from duty without sufficient cause to which he submitted an explanation dated 28.3.2005 along with medical certificate, but the General Manager, Talcher without heeding to the minutes of the discussion removed him from service with effect from 22.2.2007. There was no fault on his part, as he was suffering from illness and for that he had submitted medical certificate. Therefore he may be engaged as a security guard at Talcher Colliery as he had served as security guard from 7.9.2001 to 8.3.2003 at Talcher Colliery.

3. The 1st Party-Management in its written statement has alleged that the 2nd Party-workman Shri Ajit Kumar Deb had joined at Talcher Colliery on 23.10.1990 as Piece Rated Loader in Group-V-A in P.R. Category. He was a habitual absentee and during his tenure of service he had been issued with 14 warning/caution letters, but he never improved his attendance. In the year 2000 he worked for 51 days, in the year 2001 he worked for 131 days, in the year 2003 he worked for 85 days and in the year 2004 he worked for 35 days only. He remained absent from 10.3.2003 to 26.6.2003 in an unauthorized manner, but taking a lenient view he was allowed to join duty on 23.7.2003. On the request of the disputant he was converted to General Category Mazdoor-I with effect from 9.3.2004 from Piece Rated Category in order to enable him to perform light job in comparison to Piece Rated Loader's job, even though there was no improvement in his attendance and performance. He was issued with charge-sheet on 17/18.3.2005 for unauthorized absence from duty with effect from 6.1.2005 to 18.3.2005 and for habitual absence from duty without sufficient cause etc. His reply to the charge-sheet was found unsatisfactory and hence an enquiry was initiated against him. Notices were issued to him to attend the enquiry. Enquiry Officer conducted the enquiry in seven sittings from 13.5.2005 to 18.8.2006. During the enquiry, for the first six sittings the disputant did not attend the enquiry nor informed the reasons for his absence inspite of receipt of notices. However on 18.8.2006 he appeared before the enquiry officer and admitted the charges levelled against him. He further submitted written submissions to the enquiry officer admitting the charges of habitual and unauthorized absenteeism from duty. The enquiry officer on conclusion of enquiry submitted his findings to the Disciplinary Authority in which all the charges were found established beyond any reasonable doubt. A copy of the enquiry proceedings and findings were made available to the disputant seeking his explanation. Explanation submitted by the disputant was examined, but was not found to have any substance or merit. Therefore the disciplinary authority decided to remove him from service with effect from 23.2.2007 and order to that effect was issued. The disputant workman did not avail the opportunity of filing appeal. The enquiry conducted against him was fair, impartial and independent and due natural justice was provided to him to defend the charges levelled against him. Considering the gravity of the misconduct the punishment of removal from service awarded by the disciplinary authority is just, proper and appropriate. The disputant had produced fake certificate from the residence

of the Government Medical practitioner which is an attempt to cover up his absence period. Hence the disputant is not entitled to any relief.

4. On the pleadings of the parties, following issues were framed.

ISSUES

1. Whether the action of the Management of M/s. MCL in terminating the services of Shri A.K. Deb with effect from 23.02.2007 is legal and justified?
2. If not, to what relief the 2nd Party-workman is entitled?

5. The 2nd Party-workman Shri A.K. Deb has examined himself as W.W.-1 and Shri Tikan Bhutia as W.W.-2 and has also relied upon eight documents marked as Ext.-1 to 8.

6. The 1st Party-Management has not adduced any oral evidence. The photostat copies of documents filed by it have also not been proved and exhibited.

FINDINGS

ISSUE NO. 1

7. It is an undisputed fact that the 2nd Party-workman was removed from service after a departmental enquiry conducted on the charges of unauthorized habitual absence from duty. The 2nd Party-workman has himself admitted in his cross examination that he had worked for 131 days in the year 2001, 85 days in the year 2003, 35 days in the year 2004 and nil day in the year 2005. He has not whispered a single word about the fairness and propriety of the enquiry. He was afforded proper and sufficient opportunity to defend himself. As such it cannot be said that the enquiry was not fair and impartial and the principles of natural justice were violated during the course of enquiry. The Enquiring Officer found the charges levelled against the 2nd Party-workman as fully proved beyond any reasonable doubt. He was supplied a copy of the enquiry proceedings and findings of the enquiry report and his explanation was called which was found not satisfactory. Consequently he was removed from service by the disciplinary authority. The 2nd Party-workman has alleged that he has filed the appeal against the enquiry report. But nothing has been brought on record to prove that he had filed any appeal against the order of removal and his appeal was allowed. Unauthorized absence from duty frequently in a habitual manner is a grave misconduct. The 2nd Party-workman has not shown any satisfactory explanation or reason for his unauthorized, frequent and long absence from duty. So the punishment of removal from service awarded to him cannot be said to be illegal and unjustified. In such circumstances the action of the Management of MCL in terminating the services of Shri Ajit Kumar Deb with effect from 23.2.2007 is legal and justified. This issue is decided against the 2nd party-workman and in favour of the 1st Party-Management.

ISSUE NO. 2

8. In view of the findings recorded above under Issue No. 1, the 2nd Party-workman is not entitled to any relief.

9. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 556.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जवाहर नवोदय विद्यालय के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 273/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-42012/221/2001-आईआर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 556.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 273/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Jawahar Navodaya Vidyalaya, and their workmen, received by the Central Government on 17/01/2014.

[No. L-42012/221/2001-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present :

Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 273/2005

Registered on 12.8.2005

Sh. Madan Lal S/o Palkh Ram,
Village Malehjri, PO Danghar,
Tehsil Ghumarwin, Distt. Bilaspur (HP)
Bilaspur ...Petitioner

Versus

The Principal,
Jawahar Navodaya Vidyalaya, Birthi,
Tehsil Ghumarwin, Distt. Bilaspur (HP) ...Respondent

Appearances :

For the workman ... Sh. R. P. Rana, Adv.

For the Management ... Sh. J. S. Sathi, Adv.

AWARD

Passed on 4.12.2013

Central Government vide Notification No. L-42012/221/2001-IR(CM-II) Dated 6.8.2002, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :

> "Whether the action of the management of Jawahar Navodava Vidyalaya, Berthi Bilaspur (HP) in terminating the services of Sh. Madan Lal, S/o Sh. Palkh Ram, Ex-Mess Helper is legal and justified? If not, to what relief the workman is entitled to and from which date?"

In response to the notice the workman appeared and filed statement of claim pleading that he was engaged by the management in August 1995 on daily wage basis as Mess Helper with respondent No. 2. That his services were terminated on 12.1.1999. That he completed more than 240 days of service in each calendar year and also completed more than 240 days of service in 12 calendar months prior to the date of his termination. That his services were terminated orally and in violation of Section 25F and 25N of the Act. That the. management employed Sh. Chottu Ram after his termination and thus violated Section 25H of the Act. That the persons junior to him were also retained in service and thus there is violation of Section 25G of the Act. Thus he is entitled to reinstatement with all the consequential benefits.

Respondent filed written statement and pleaded that the petitioner was never engaged against regular post and was engaged only in the Mess to assist regular cook and that too for the period the school remained open. He was paid out of consolidated fund. That his services were dispensed with on 20.7.1998 as the strength of the students decreased as well as the regular Mess Helpers joined the Mess. That the petitioner filed Civil Writ Petition No.135 of 1989 before the Hon'ble High Court of Himachal Pradesh challenging his termination but the same was dismlssed. He also approached the Central Administrative Tribunal by filing OA No.597/HP of 1999 which was also dismissed with the observation that the claimant being not a civil servant is not entitled to any relief. That his services were rightly dispensed with.

In support of its case the workman appeared in the witness box and filed his affidavit stating his case as stated in the claim petition.

On the other hand management examined Prem Lata who filed the affidavit reiterating the case as set out in the written statement.

It was argued by the learned counsel for the workman that workman continuously worked with the respondents from August 1995 to 11.1.1999 and in every calendar year he completed more than 240 days of service and his services have been arbitrarily terminated without complying with the provisions of Section 25F of the Act. It is further submitted that after the termination of the services of the workman, the management engaged Sh. Chottu Ram and thus violated the provisions of Section 25H of the Act. It was also argued that the management retained persons who were junior to the workman in violation of Section 25G of the Act and in the circumstances the termination of the workman is illegal and was liable to be reinstated with full back wages.

It may be added that it is the case of the workman himself that he was engaged on daily wage basis and he worked as such till his services were dispensed with on 20.7.1998. Thus the status of the workman was as "daily wage worker" and the engagement of such a work comes to an end when it is discontinued. It is nowhere the case of the workman that he was engaged against a regular post or he was selected by following any procedure. Thus he cannot claim that the management has violated any provision of the Act and is liable to be reinstated and in this respect reliance may be placed on Secretary, State of Karnataka & Ors. Vs. Umadevi and Ors. And it was observed in para, 34 of the Judgment—

> "Thus it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment this court while laying down the law, has necessarily to hold that relevant rules and after a proper competition among qualified persons the same would not confer any right on the appointee. If it is a contractual appointment the appointment comes to an end at the end of contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the terms of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, it the original appointment was not made by following a due process of selection as envisaged by the relevant regular recruitment at the instance of temporary employee whose period employment has come to

an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of court, which we have described 'as litigious employment in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching. it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the state the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the state or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

Again in Divisional Forest Officer, Rohtak Vs. Jagat Singh and Another, it was observed in Para 4 of the judgment as follows—

It may be noticed that the definition of retrenchment in Section 2(oo) of the Act is applicable to the provisions contained in Chapter VA containing Sections 25F and 25H of the Act. The termination of daily wager is not retrenchment failing within Section 2(oo)(bb) of the Act. Therefore, the workman who is a daily wager cannot be reinstated as it does not amount to retrenchment within the meaning of Sections 25F and 25G of the Act.

It is the specific case of the management that the services of the, workman were dispensed with when not required by it and since he was a daily wage worker, his services came to an end when discontinued.

In the result it is held that termination of the services of the workman is legal and workman is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 557.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ संख्या 11/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22013/1/2014-आईआर (सी-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 557.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/11/ 2010) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 17.01.2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL.DISTRICT & SESSIONS COURT, GODAVARIKHANI

Present : Sri G.V. Krishnaiah, Chairman-cum-Presiding Officer.

Monday, the 16th day of December, 2013

INDUSTRIAL DISPUTE NO. 11 OF 2010

Between :

Mamidi Rajaiah, Ex.Badli Filler,
E.C.No.1234482, S/o.Sailoo, Age 32 years,
C/o.B.Amarender Rao, Advocate,
Raghupathi Nagar, (Ganga Nagar),
PO.Godavarikhani-505 209,
Dist.Karimnagar (A.P) ...Petitioner

And

(1) The Superintendent of Mines,
S.C.Co.Ltd., GDK.No.9 Incline,
PO.Godavarikhani-505 209, Dist.Karimnagar (A.P)

(2) The General Manager,
S.C.Co.Ltd., Ramagundam Area-II,
PO.Godavarikhani-505 209, Dist.Karimnagar (A.P)

(3) The Chairman & Managing Director,
S.C.Company Ltd., P.O. Kothagudem,
District: Khammam (A.P.) ...Respondents

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri B.Amarender Rao Advocate, for the petitioner and Sri D. Krishnamurthy Advocate, for the respondent, and the matter having stood over before me for consideration till this date, the Court passed the following :

AWARD

1. The petitioner who worked as Badli Filler in the Singareni Colleries Company Limited seeks his reinstatement by setting aside the dismissal order dated 22.02.2001.

The allegations in the petition are as follows:

2. According to him, he had put in (199) musters in the year 1995, (169) musters in the year 1996, (104) musters in the year 1997, (65) musters in the year 1998, (33) musters in the year 1999, (33) musters in the year 1999 and (90) musters in the year 2000. The reason for the poor attendance during the year 1999 is his ill-health and he improved his attendance in the year 2000. Though the petitioner contended that the departmental enquiry was not conducted fairly and properly, memo was filed under Sec.11-A of I.D. Act stating that the validity of the departmental enquiry is not in dispute.

4. R-1 filed counter which was adopted by R-2 and R-3. The main points raised in the counter are regarding the lack of jurisdiction of this Tribunal since the respondents management is a Central Government and that there was a poor attendance of the petitioner from 1997 to 2000 (104) musters in the year 1997, (65) musters in the year 1998, (33) musters in the year 1999, (33) musters in the year 1999 and (90) musters in the year 2000, and that therefore charges were framed under Sec. 25(25) of standing orders of the company.

> "Habitual late attendance or habitual absent from duty without sufficient cause & put in only (33) musters during the year 1999"

5. The petitioner received charge sheet on 05.03.2000 and failed to submit explanation and therefore respondent conducted enquiry on 07.07.2000 with due notice to the petitioner that petitioner attended the enquiry on 07.07.2000 and admitted the charges, that the petitioner though given an opportunity did not produce any evidence on his behalf, that the petitioner was issued show cause notice on 23.11.2000 along with the copies of the enquiry proceedings but the petitioner is not available in his address, therefore the Singareni company notice was published in Vaartha Telugu News daily dated 17.01.2001 but the petitioner failed to approach the respondent company, therefore punishment of dismissal was imposed with effect from 23.02.2001 as per order dated 22.02.2001, that habitual absenteeism adversely impacts the performance of the company which is engaged in all the minor activities and therefore petition may be dismissed.

6. At the time of enquiry both parties filed written arguments. Advocate for petitioner cited the following three decisions in support of his case.

I. 2009-IV-LLJ-672 (SC), IN THE SUPREME COURT OF INDIA, between Chairman-cum-Managing Director, Coal India Limited And Mukul Kumar Choudhuri and others.

II. AIR 1988 (SC), IN THE SUPREME COURT OF INDIA, between Scooter India Ltd. and Labour Court, Lucknow and others.

III. 1997(III)LLJ (Supp) page 1141 between U. Chinnappa And Cotton Corporation of India and others.

7. For the consideration of respective contentions of the parties the following points required to be determined :

1. "Whether this Tribunal has got jurisdiction?"
2. "Whether the punishment of dismissal of the petitioner is justified and proportionate?"

8. **POINT No. 1**

As per the Judgment of High Court reported in 1997 (III) LLJ (Supp.) 11 between U. Chinnappa And Cotton Corporation of India. This Court has got jurisdiction to entertain the dispute raised by the petitioner.

This point is accordingly answered in favour of the petitioner.

9. **POINT No. 2**

The petitioner did not give any reply to the charges levelled against him but he has now came up with the plea due to his illness he could not attend his duties regularly. He is relying on his performance during the years 1995, 1996 and 1997 and also during the period of 4 months in the year 1994. On the aspects of removal from service for the misconduct of absenteeism without leave, a decision of the Supreme Court reported in 2009-IV-LLJ-672 (SC), IN THE SUPREME COURT OF INDIA, between Chairman cum Managing Director, Coal India Limited And Mukul Kumar Choudhuri and others cited on behalf of the petitioner is relevant. In this case the workman received show cause notice together with copy of enquiry report and said that he wanted to resign from the company due to personal problems and the management was unsympathetic in not accepting his resignation. The facts are different in that case. But the observation of the Supreme Court that the punishment of dismissal is unduly harsh can be applied to the present case. Another decision reported in AIR 1988 (SC),page 303 IN THE SUPREME COURT OF INDIA, between Scooter India Ltd and Labour Court, Lucknow and others. In this case also termination of the employee was set aside even though enquiry was held to be fair and lawful. Under the circumstances the dismissal of the petitioner on the ground of absenteeism has to be held as unjustified and disproportionate.

10. In the result, the order of dismissal dt. 22.02.2001 is set aside and the respondents are directed to reinstate the petitioner into service as "Afresh Badli Filler" and he shall be subjected to medical test for the post. The petitioner is not entitled to any back wages, continuity of service and any other attendant benefits.

G. V. KRISHNAIAH, Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman	For Management
-Nil-	-Nil-

Exhibits

For workman :

Ex.W-1	Dt. 21-08-1994	Office order (Appointment order as Badli Filler) x.copy.
Ex.W-2	Dt. 12-12-1996	Office order converting the petitioner fro Tunnel Mazdoor to Badli Filler, x.copy.
Ex.W-3	Dt. 22-02-2001	Office order (Dismissal order), x.copy.
Ex.W-4	Dt. 07-12-2006	Demand letter with Ack.,

For Management :

Ex.M-1	Dt. 05-03-2000	Charge sheet, office copy.
Ex.M-2	Dt. 02-07-2000	Enquiry notice, office copy.
Ex.M-3	Dt. 07-07-2000	Enquiry proceedings
Ex.M-4	Dt. 31-08-2000	Enquiry report
Ex.M-5	Dt. 23-11-2000	Show cause notice, office copy
Ex.M-6	Dt. 26-12-2000	Undelivered postal returned cover.
Ex.M-7	Dt. 17-01-2001	Vaartha daily news paper Telugu.
Ex.M-8	Dt. 22-02-2001	Dismissal order, office copy.

नई दिल्ली, 17 जनवरी, 2014

का.आ. 558.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ संख्या 1/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 558.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/1/2007) as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 17.01.2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL.DISTRICT & SESSIONS COURT, GODAVARIKHANI

Present : Sri G.V. Krishnaiah, Chairman-cum-Presiding Officer.

INDUSTRIAL DISPUTE NO. 1 OF 2007

Monday, the 2nd day of December, 2013

Between :

(1) Routhu Bhagya Lakshmi, W/o. Latchanna @ Latchaiah, 30 years, Occ: Household.

(2) Routhu Manasa, D/o. Latchanna, Age 14 years, Occ: Student,

(3) Routhu Padmasree, D/o. Latchanna, Age 12 years, Occ: Student Petitioners 2 & 3 being minors, rep. by their natural mother and guardian Petitioner No.1.

All are R/o. T2-164, C/o. Goli Venkati, Shanthighani, Bellampalli, Dist.Adilabad

...Petitioners

- And-

(1) The General Manager, S.C.Co.Ltd., Ramagundam-I, Godavarikhani.

(2) The General Manager, S.C.Co.Ltd., Ramagundam-II, Godavarikhani

...Respondents

This case coming before me for final hearing in the presence of Sri S.Bhagavantha Rao, Advocate for the petitioners and of Sri D.Krishna Murthy, Advocate for the Respondents; and having been heard and having stood over for consideration till this day, the Court delivered the following :

AWARD

This petition is filed U/Sec.2-A(2) of the Industrial Disputes Act, 1947 praying this court to declare the dismissal order dt.1-2-2000 passed by R-1 in dismissing the deceased workman Routhu Latchanna @ Lakshmaiah as illegal, null and void; and consequently declare that the said Latchanna was deemed to be in service by the time of his death i.e., 11-5-2005, directing the respondents to appoint the petitioner No.1 on compassionate grounds, to pay all attendant benefits, back wages and other benefits of Routhu Latchanna to the petitioners may be granted.

2. The petitioner No.1 is the only widow and the petitioners 2 & 3 are the minor daughters of Routhu Latchanna @ Lakshmaiah, who worked as Coal Filler under the respondents. The said Latchanna died of sun-stroke on 11-5-2005. He was appointed as badli filler in the year 1993 and his services were regularized by order dt.29-12-1995

as coal filler. He worked as Coal Filler till the date of his illegal removal by the respondents on 1-2-2000. Charge sheet dt.16-2-1999 was issued alleging that he was present only for 64 days during the year 1998, with the following charge :

CHARGE:

"Habitual Late Attendance or habitual absence from duty without sufficient cause" amounts to misconduct as per S.O.No.25 (25) of SCCLtd.,

The said Latchanna submitted his explanation to the said charge sheet but the same was not considered. The enquiry was conducted in an eye wash manner and the enquiry officer submitted his report. Basing on the enquiry report, R-1 dismissed Latchanna from the services of the company vide proc., dt.1-2-2000. The dismissal order is not sustainable; it is too harsh and disproportionate. He was misguided by the subordinate officers of the respondents to receive certain amounts from the company. The petitioners came to know about the letter dt.5-7-2005 reinstating the said Latchanna as fresh Coal Filler and by that time, he expired. The petitioners do not have any other source of income and they are living in dire poverty. The petitioner No.1 has completed SSC and is eligible for being appointed in any suitable post. If suitable compassionate appointment is not given to the petitioner No.1 to feed her children, they will be subjected to starvation and other hardships. Therefore, they pray to allow the petition as prayed for.

3. The respondent No.1 filed his counter denying all the allegations in the petition putting the petitioners to strict proof of all those allegations. The 2nd respondent filed memo adopting the counter filed by R-1.

4. The brief averments of counter of R-1 are that the respondents' company is a Government Company incorporated under the provisions of Company's Act, 1956 for carrying out the business of winning and selling the coal and since the coal mining industry is a central subject, the appropriate Government for this respondent/ management is Central Government. As per Sec.7(A)(1) of I.D., Act, the appropriate Government may by notification in the official gazette constitute one or more Industrial Tribunals for the adjudication of Industrial Disputes relating to any matter whether specified in the 2nd or 3rd schedule and for performing such other functions as may be assigned to them under this Act. The Central Government established an Industrial Tribunal-cum-Labour Court at Hyderabad from 29-12-2000 for adjudication of Industrial Disputes and the petitioners ought to have approached the said Tribunal for the redressal of grievances if any. But the petitioners conveniently avoided to file the petition before the Tribunal established by the Central Government for the reasons best known to them and the petition is not maintainable under law and the same may be dismissed on this ground alone.

5. As per the service records of the husband of the petitioner No.1 Sri Routhu Latchanna, the name of Bhagyalaxmi was recorded as wife and the name of Padma was recorded as daughter. He was appointed in the respondents company on 4-3-1993 as Badli Filler and later he was confirmed as coal filler on 1-9-1995. At the time of dismissal, he worked at GDK.No.11-A Incline. He remained absent on number of days without sufficient cause during the year 1998 and put-in only 64 days actual attendance. Hence, he was issued charge sheet dt.16-2-1999 and he submitted explanation dt.19-2-1999, which was found not satisfactory. He attended the enquiry on 17-8-1999. He was given full and fair opportunities to defend himself in the enquiry. He pleaded guilty of misconduct and did not produce any witnesses or documents in support of his illness. He admitted the charges leveled against him and they are proved during the enquiry. He had put in only 64 musters during the year 1998 and put in only 55 musters during the year 1999. Therefore, the respondents company was constrained to dismiss him from service vide order dt. 1-2-2000 w.e.f., 2-2-2000.

6. In view of the persistent request of the recognized union, it was offered to examine the cases of dismissed workman during the period from 1-1-2000 to 30-6-2004 by a High Power Committee, in terms of previous MOS dt. 21-2-2000. The husband of the petitioner No.1 was also called for interview along with others. He attended the interview and was selected for reappointment as Badli Filler for a period of one year on trial basis, subject to medical fitness. Accordingly, he was issued letter dated 5/6-7-2005 informing his reappointment as badli filler on trial basis for one year. He was advised to report to the General Manager, Bellampalli on 30-9-2005, failing which he will loose the opportunity for reappointment in the company. He neither reported at the concerned authorities nor informed the reasons for not reporting. The respondents are not aware of the death of the husband of the petitioner No.1. As admitted by the petitioners, he died on 11-5-2005 i.e., before receiving the above letter for reappointment.

7. As per the JBCCI guidelines and company rules, dependent employment on compassionate grounds will be provided to the dependents of the workman who died while in service of the company. In this case, the husband of the petitioner No.1 died on 11-5-2005 i.e., 5 years after his dismissal from the company on 2-2-2000. The claim of the petitioners for appointment on compassionate grounds and for payment of back wages and attendant benefits is contrary to law and liable to be dismissed. Therefore, the respondents pray to dismiss the petition, with costs.

8. Ex.W-1 is marked on behalf of the petitioners and Ex.M-1 to Ex.M-12 are marked on behalf of the respondents.

9. Heard both sides. Perused the material papers on record.

10. Now the points for consideration are:-

(1) Whether the present petition is maintainable before this Tribunal?

(2) To what extent the alleged misconduct on the part of the deceased workman Routhu Latchanna was made out in the domestic enquiry and whether the punishment of dismissal from service imposed by the respondents is justified?"

(3) Whether the petitioners who are LRs., of the deceased workman are entitled to any relief?

11. The counsel for the petitioners filed Memo U/ Sec.11-A of ID Act before this court on 29-7-2013 stating that the petitioners are not disputing the validity of domestic enquiry and prayed this court to decide the matter U/Sec.11-A of ID Act on the gravity of offence.

12. **Point No.1 :**

It is the case of the respondents that the respondents company incorporated under the provisions of Company's act 1956 for carrying out the business of selling the coal. Since the coal mining industry is a Central subject, the appropriate Government for this respondents/ management is Central Government. The Central Government established an industrial Tribunal-cum-Labour Court at Hyderabad on 29-12-2000 for adjudication of Industrial disputes and the petitioner ought to have approached the said tribunal for redressal of grievances if any. As such, the ID is liable to be dismissed in limini.

13. In a case reported in 1998(5) ALD-16 (D.B) between U.Chinnappa Vrs., Cotton Corporation of India and others, the Division Bench of Hon'ble A.P., High Court held that the Presidential assent given under Article 254(2) makes the State law prevail over the provisions of the Central law to the extent of repugnancy. That Section 2-A(2) of the Industrial Disputes Act, 1947 is not confined to workmen employed in Industrial undertakings of the State Government and it applies also to workmen engaged in the Central Government undertakings.

14. In the light of the above cited case law, Section 2-A(2) of I.D Act, 1947 applies both to the workmen employed in State Government undertakings and Central Government undertakings. It is for the workman to approach either to the Industrial Tribunals having Central jurisdiction or State jurisdiction. Therefore, I hold that this I.D., petition is maintainable before this Court. Accordingly, the point is answered in favour of the petitioners.

15. **Point Nos. 2 & 3 :**

Now, it is to be seen to what extent the alleged misconduct on the part of the deceased workman Routhu Latchanna was made out in the domestic enquiry and whether the punishment of dismissal from service is justified.

The petitioner was dismissed by the 1st respondent by order dt.1-2-2000 marked as Ex.M-11. Admittedly, the respondents' company itself reviewed the above dismissal order and sent order of reinstatement dt.5/6-7-2005 marked as Ex.M-12. Therefore, the order of dismissal was no longer in existence. The petitioner died on 11-5-2005. Their Lordships of the Hon'ble High Court in its Judgment reported in 1995 (2) ALT-683 held that after the death of workman, his legal heirs/legal representatives can validly institute Industrial Dispute questioning the validity of termination of such workman and claim the reliefs for the benefit of the estate of the deceased, even-though they are not workman. What the deceased workman himself would have been awarded by the Labour Court except the relief of reinstatement had he survived, should be considered to be a part of his estate. Therefore, the Industrial Dispute raised by the petitioners is competent and maintainable. In this case, admittedly the dismissal order was reviewed by the respondents/ management itself and they sent order of reinstatement to the workman. As per the above judgment of the Hon'ble High Court, the petitioners are entitled to the benefits, as if the workman died while in service including the compassionate appointment to the petitioner No.1. However, the petitioners are not entitled to any back wages.

16. In the result, the respondents' company is hereby directed to grant all the benefits to the petitioners as if the workman died while in service including compassionate appointment to the petitioner No.1. However, the petitioners are not entitled to any back wages.

G. V. KRISHNAIAH, Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman	For Management
-Nil-	-Nil-

Exihibits

For workman :

Ex.W-1	Dt. 30-05-2005	Death Certificate

For Management :

Ex.M-1	Dt. 16-02-1999	Charge sheet
Ex.M-2	Dt. 18-02-1999	Enquiry call letter
Ex.M-3	Dt. 19-02-1999	Explanation to the charge sheet
Ex.M-4	Dt. 28-06-1999	Enquiry notice
Ex.M-5	Dt. 18-02-1999	Undelivered postal returned cover with ack.
Ex.M-6	Dt. 04-08-1999	Paper publication in Telugu Vaartha Newspaper
Ex.M-7	Dt. 17-08-1999	Enquiry proceedings
Ex.M-8	Dt. —	Enquiry report.
Ex.M-9	Dt. 06-10-1999	Show cause notice
Ex.M-10	Dt. 11-11-1999	Reply to show cause notice
Ex.M-11	Dt. 01-02-2000	Dismissal order copy
Ex.M-12	Dt. 5/6-7-2005	Re-appointment letter issued to the petitioner, x-copy.

नई दिल्ली, 17 जनवरी, 2014

का.आ. 559.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ संख्या 19/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-01-2014 को प्राप्त हुआ था ।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 559.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/ 19/2010) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 17.01.2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI

Present : Sri G.V. Krishnaiah, Chairman-cum-Presiding Officer.

INDUSTRIAL DISPUTE NO. 19 OF 2010

Tuesday, the 10th Day of December, 2013

Between :

Somishetti Shankar, S/o.Erraiah,
Aged about 45 years,
Occ: Ex-Coal Filler, R/o. Singapoor,
Mancherial Mandal, Dist.Adilabad ...Petitioner

- And-

(1) The Superintendent of Mines, RK VI Incline, Ramakrishnapur, Dist.Adilabad.

(2) The General Manager, S.C.Co.Ltd., Sreerampur, Post: Srirampur (Then RKP closed), Dist.Adilabad.

(3) The Managing Director, S.C.Company Ltd., Kothagudem, District: Khammam.

...Respondents

This case coming before me for final hearing in the presence of Sri S.Bhagavantha Rao, Advocate for the petitioner and of Sri D. Krishna Murthy, Advocate for the Respondents; and having been heard and having stood over for consideration till this day, the Court delivered the following :

AWARD

This petition is filed U/Sec.2-A(2) of the Industrial Disputes Act, 1947 praying this court to direct the respondents to reinstate the petitioner into service with continuity of service and other attendant benefits with full back wages by setting aside dismissal order vide Proc., No. P/RKP/16/ 99/407, dt.16-02-1999.

2. The averments of the petition are that the petitioner was appointed as an employee on 10-01-1977 and the petitioner discharged his duties to the fullest satisfaction of superiors till removal from service and his services are governed by various standing orders of the company.

3. The petitioner was dismissed from service foisting a charge of absenteeism for the year 1998. He submitted application to the respondent to reconsider for his appointment and the respondent issued a letter to attend interview. The petitioner attended the interview but there was no response. The petitioner was not served with charge memo and charge sheet. He was not supplied dismissal order, but it was affixed on the notice board. He preferred an appeal and review, but there was no response. After working for more than 21 years, the respondent dismissed the petitioner from service which is arbitrary and illegal. The petitioner finally issued demand letter dt.2-2-2010 to the respondents 1 & 2, but there is no response. The petitioner and his children became paupers in the society for lack of food, cloths and shelter. Therefore, he prays to allow the petition as prayed for.

4. The respondent No.1 filed his counter denying all the allegations in the petition putting the petitioner to strict proof of all those allegations. The respondents 2 & 3 filed memo adopting the counter filed by R-1.

5. The brief averments of counter of R-1 are that the respondents' company is a Government Company incorporated under the provisions of Company's Act, 1956 for carrying out the business of mining and selling the coal and since the coal mining industry is a central subject, the appropriate Government for this respondent/ management is Central Government. As per Sec.7(A)(1) of I.D., Act, the appropriate Government may by notification in the official gazette constitutes one or more Industrial Tribunals for the adjudication of Industrial Disputes relating to any matter whether specified in the 2nd or 3rd schedule and for performing such other functions as may be assigned to them under this Act. And that the Central Government established an Industrial Tribunal-cum-Labour Court at Hyderabad from 29-12-2000 for adjudication of Industrial Disputes and the petitioner

ought to have approached the said Tribunal for the redressal of grievances if any. But he conveniently avoided to file his petition before the Tribunal established by the Central Government for the reasons best known to him and the petition is not maintainable under law and the same may be dismissed on this ground alone. The present dispute is barred by limitation as per Sec.2-A of the Industrial Disputes Amendment Act, 2010 which came into force w.e.f., 15-9-2010. The petitioner was dismissed from service in the year 1999, after expiry of about 11 years, he raised this dispute, which is not maintainable under law and may be dismissed on the ground of delay and latches.

6. The petitioner was appointed as Badli Filler on 31-08-1978. Being an underground employee, the petitioner is expected to put in minimum 190 musters in a calendar year. But, the following attendance particulars indicate that he was not regular to his duties and in no year he had put in 190 musters during the period from 1994-1998.

Sl.No.	Year	No. of musters
1	1994	126
2	1995	61
3	1996	68
4	1997	122
5	1998 upto September	79

During the period from January, 1996 to December, 1996 the petitioner has put in only 68 musters. As the above act amounted to misconduct under Companies Standing Orders Clause No.25.25 he was charge sheeted vide charge sheet dt. 23-10-1998. The relevant clause of standing orders reads as under:-

"Clause 25.25 – Habitual late attendance or habitual absence from duty without sufficient cause".

7. The petitioner received the charge sheet and submitted his explanation vide letter dt.29-10-1998. The respondents' company issued enquiry notice dt. 11-11-1998 advising the petitioner to attend the enquiry on 23-11-1998. The petitioner attended the enquiry proceedings on 23-11-1998 and pleaded guilty to the charges. He fully participated in the enquiry proceedings. The enquiry was conducted duly following the principles of natural justice. The enquiry officer submitted his findings holding the petitioner guilty of the misconduct under the company's standing orders. He was issued show cause notice dt.12-12-1998 to make his representation if any against the findings of the enquiry. Having received the said notice, he submitted reply. Finding the reply unsatisfactory, the respondents' company dismissed the petitioner from service vide office order dt. 16-2-1999. The contention of the petitioner that he applied for reappointment and the same was not considered by the respondents' company is false, hence denied. The petitioner received charge sheet dt.23-10-1998 and submitted his explanation dt. 29-10-1998. He attended the enquiry proceedings on 23-11-1998 and admitted the charges. The enquiry officer submitted his findings report dt.3-12-1998 holding the petitioner guilty of misconduct under company's standing orders. The petitioner submitted reply on the enquiry findings. All the contentions raised by the petitioner are false, hence denied. Therefore, the respondents pray to dismiss the petition with costs.

8. Ex.W-1 & Ex.W-2 are marked on behalf of the petitioner and Ex.M-1 to Ex.M-10 are marked behalf of the respondents.

9. Heard both sides. Perused the material papers on record.

10. Both sides have also filed written arguments.

11. Now the points for consideration are :

(1) Whether the present petition is maintainable before this Tribunal?

(2) To what extent the alleged misconduct on the part of the petitioner was made out in the domestic enquiry and whether the punishment of dismissal of the petitioner is justified?"

12. In this case, the counsel for the petitioner filed Memo stating that the petitioner is not disputing the validity of domestic enquiry and prayed this court to decide the matter on the material available on record, U/Sec.11-A of ID Act, on 21-11-2011, which was recorded. Therefore there is no necessity to decide the validity of domestic enquiry conducted by the respondents.

13. **POINT No.1 :**

It is the case of the respondents that the respondents company was incorporated under the provisions of Companies Act 1956 for carrying out the business of selling the coal. Since the coal mining industry is a Central subject, the appropriate Government for this respondents/ management is Central Government. The Central Government established an industrial Tribunal-cum-Labour Court at Hyderabad on 29-12-2000 for adjudication of Industrial disputes and the petitioner ought to have approached the said tribunal for redressal of grievances if any. As such, the ID is liable to be dismissed in limini.

14. In a case reported in 1998(5) ALD-16 (D.B) between U.Chinnappa Vrs., Cotton Corporation of India and others, the Division Bench of Hon'ble A.P., High Court held that the Presidential assent given under Article 254(2) makes the State law prevail over the provisions of the Central law to the extent of repugnancy. That Section 2-A(2) of the Industrial Disputes Act, 1947 is not confined

to workmen employed in Industrial undertakings of the State Government and it applies also to workmen engaged in the Central Government undertakings.

15. In the light of the above cited case law, Section 2-A(2) of I.D Act, 1947 applies both to the workmen employed in State Government undertakings and Central Government undertakings. It is for the workman to approach either the Industrial Tribunals having Central jurisdiction or State jurisdiction. Therefore, I hold that this I.D., petition is maintainable before this Court. Accordingly, the point is answered in favour of the petitioner.

16. The petitioner has conceded the validity of domestic enquiry conducted by the respondents. During the period from January 1996 to December 1996, the petitioner had put in only 38 musters. The charge sheet is marked as Ex.M-1. Explanation submitted by the petitioner is marked as Ex.M-3, wherein it is stated that due to ill-health he is absenting to duties since 4 years. The enquiry proceedings are marked as Ex.M-6. During the enquiry, the petitioner put-forth the same defence and deposed that due to his ill-health and family problems, he absented to his duties. The petitioner has not produced any documentary evidence to substantiate his ill-health, but the said defence of the petitioner was not contradicted by the respondents.

17. The attendance particulars of the petitioner during the previous 5 years period as mentioned in the counter are as under :

Sl.No.	Year	No. of musters
1	1994	126
2	1995	61
3	1996	68
4	1997	122
5	1998 upto September	79

The above attendance particulars of the petitioner show that during the years 1994 and 1997, he had put in more than 120 musters per year. Thus, after the charge sheeted year of 1996, he improved his attendance during the year 1997 and 1998 also.

18. The learned counsel for the petitioner contended that the major punishment of dismissal from service imposed on the petitioner is shockingly disproportionate. The absence of the petitioner was due to the ill-health of the petitioner but not otherwise. As such, the respondents ought not have dismissed the petitioner from service. Hence, the major punishment of dismissal is liable to be modified to a lesser punishment.

19. In this case, the petitioner had put in less musters during the years 1995 to 1998. Charge sheet was issued with reference to the absenteeism for the year 1996. Admittedly during the years 1997 and 1998, the petitioner improved his attendance and put in 122 muster and 79 musters respectively. Further, having been appointed during the year 1978, he put in good attendance till the year 1993. He worked in the respondents company for nearly (20) years. Hence, the petitioner can be given one more chance to mend himself. In these circumstances, I am of the considered opinion, that dismissal of the petitioner from service is not proportionate to the charge proved against him. Therefore, I hold that dismissal of the petitioner from service is not justified.

20. In the light of above foregoing discussion, I hold that the charge framed against the petitioner is proved and the punishment of dismissing the petitioner from service is not justified and not proportionate to the charge proved against him. Therefore, I hold that the punishment of dismissal needs modification to that of reinstatement as "Afresh Badli Filler" and the petitioner shall be subjected to medical fitness test for the post. The point is answered accordingly.

21. In the result, the order of dismissal dt.16-02-1999 is set aside and the respondents are directed to reinstate the petitioner into service as "Afresh Badli Filler" and he shall be subjected to medical test for the post. The petitioner is not entitled to any back wages, continuity of service and any other attendant benefits.

G. V. KRISHNAIAH, Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman	For Management
-Nil-	-Nil-

Exhibits

For workman :

Ex.W-1	Dt. 16-02-1999	Dismissal order
Ex.W-2	Dt. 10-11-1998	Petitioner's daughter's marriage advance claim returned letter.

For Management :

Ex.M-1	Dt. 23-10-1998	Charge sheet
Ex.M-2	Dt. 29-10-1998	Ack., to the charge sheet
Ex.M-3	Dt. 29-10-1998	Reply to charge sheet.
Ex.M-4	Dt. 11-11-1998	Enquiry notice
Ex.M-5	Dt. 23-11-1998	Enquiry proceedings
Ex.M-6	Dt. 03-12-1998	Enquiry report.
Ex.M-7	Dt. 21-12-1998	Show cause notice
Ex.M-8	Dt. 05-01-1999	Ack., to show cause notice
Ex.M-9	Dt. 16-01-1999	Representation of petitioner
Ex.M-10	Dt. 16-02-1999	Dismissal order.

नई दिल्ली, 17 जनवरी, 2014

का.आ. 560.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 75/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/140/2011-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 560.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 75/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 17/01/2014.

[No. L-22012/140/2011-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 31st day of October, 2013

INDUSTRIAL DISPUTE No. 75/2011

Between :

Sri Satyanarayana,
Vice Chairman,
SC Employees Union (CITD),
Mandamarri Division,
Mandamarri – 504231. ...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Limited,
Mandamarri Division,
Mandamarri – 504 231 ...Respondent

Appearances :

For the Petitioner : NIL

For the Respondent : Legal Representative

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/140/2011-IR(CM-II) dated 12.10.2011 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action of the management of M/s. Singareni Collieries Company Ltd., Mandamarri Division, in not paying salary/wages to illegal suspension period from 31.8.2000 to 20.9.2000 in respect of Shri Ch. Venkaiah, SFC, KK-1, Mandamarri Area is legal and justified? To what relief the workman concerned is entitled to?"

2. The case stands posted for appearance of Petitioner union and for filing of claim statement and documents. Petitioner union called absent and there is no representation since long time. Inspite of fair opportunity claim statement was not filed by the Petitioner union. In the circumstances, taking that Petitioner is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 जनवरी, 2014

का.आ. 561.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीबीएमबी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 218/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-23012/2/2011-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 561.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 218/2011 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of BBMB, Sector-19, Madhya Marg, and their workmen, received by the Central Government on 17/01/2014.

[No. L-23012/2/2011-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 218/2011

Registered on 22.9.2011

The General Secretary,
BBMB Karamchari Sangh,
H.O. – 4DD, Nangal Township, Ropar ...Petitioner

Versus

The Chairman, BBMB,
Sector 19, Madhya Marg,
Chandigarh ...Respondents

APPEARANCES :

For the workman Ex parte

For the Management Sh. S.K. Goyal Law Officer

AWARD

Passed on- 6.12.2013

Central Government vide Notification No. L-23012/2/2011-IR(CM-II) Dated 01.09.2011, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :

"Whether the action of the management of BBMB (I) in not restoration of policy of service on compassionate grounds to BBMB employees, (II) in not granting of BCA on Basic Pay+DP and without ceiling (III) in not filling up of the vacant posts and regularization the services of daily rated workers (IV) in not restoring the benefit of granting leave encashment instated of LTC to BBMB employees (V) in not granting of advance promotional increment(s) on completion of 23 years service is just fair and legal? To what relief the workmen concerned are entitled to?"

On receipt of the reference, notice was issued to the worker-Union. Sh. R.K. Singh Parmar appeared on its behalf but on 25.9.2013 he made a statement that he was not representing the workmen. Consequently, notice was again issued to the worker-Union through registered cover for 29.11.2013 but none appeared on behalf of worker Union and was proceeded ex parte vide separate order dated 29.11.2013.

Since the workmen-Union neither filed any statement of claim nor led any evidence to claim the reliefs as find mentioned in the reference, and therefore it cannot be said that the worker-union is entitled to the reliefs claimed for. Hence, the reference is answered against the worker-Union.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 562.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 19/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 562.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad (CGIT/LCID/19/2008) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 17.01.2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 22nd day of July, 2013

INDUSTRIAL DISPUTE L. C. No. 19/2008

Between :

Sri Jupaka Rajesh,
S/o Gattaiah,
C/o Smt. A. Sarojana,
Advocate, Flat No. G7,
Opp. Badruka Jr. College for Girls,
Kachiguda, Hyderabad ...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandmarri,
Adilabad district.
2. The Colliery Manager,
M/s. Singareni Collieries Company Ltd.,
KK-1 Incline, Mandamarri area,
Mandamarri,
Adilabad District ...Respondents

Appearances :

For the Petitioner : M/s. A. Sarojana &
K. Vasudeva Reddy, Advocates

For the Respondent : M/s. M.V. Hanumantha Rao,
Advocate

AWARD

This is a petition filed by the Petitioner Sri Jupaka Rajesh, under Sec. 2 A (2) of the I.D. Act, 1947 against the management of M/s. Singareni Collieries Company Ltd., and numbered in this Court as L.C.I.D.No. 19/2008 and notices were issued to the parties.

2. Petitioner has filed this petition against his dismissal from service vide order No. MMR/PER/D/072/4865 dated 3.10.2004 by the Respondent without following the procedure, seeking for reinstatement with all consequential benefits. Respondents have filed counter statement as well as documents in support of their contentions.

3. When the matter came up for consideration on the point of validity of domestic enquiry Learned Counsel for the Petitioner filed memo to refer the matter to Lok Adalat and the matter has been referred to Lok Adalath for amicable settlement.

4. While things stood so, Petitioner has filed memo seeking for permission to withdraw his case pleading that the management was kind enough to offer employment to him subject to withdrawal of the present dispute and that he be permitted to withdraw his case. In the given circumstances, the matter has been called to the regular file from Lok Adalath.

5. Notice given to Respondents. Heard both parties. Petitioner is permitted to withdraw his case.

6. In the result, the case is dismissed as withdrawn.

Award is passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 जनवरी, 2014

का.आ. 563.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 46/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/270/1995-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 563.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/1996) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of NCL and their workmen, received by the Central Government on 17/01/2014.

[No. L-22012/270/1995-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/46/96

Presiding Officer : SHRI R.B. PATLE

Secretary,
Coalfields Labour Union (CITU),
Northern Coalfield Ltd.,
Amlohari Pariyojana,
Distt. Sidhi (MP) ...Workman/Union

Versus

Chief General Manager,
Northern Coalfields,
Amlohari Pariyojana,
Distt. Sidhi (MP) ...Management

AWARD

Passed on this 3rd day of December, 2013

1. As per letter dated 14-2-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012(270)/95-IR(C-II) . The dispute under reference relates to :

> " Whether the action of the General Manager, Amlohri Project, NCL Sidhi (MP) in imposing punishment of demotion on Shri Ram Lallu Gupta from UDC to LDC is proper and legal? If not, to what relief the concerned workman is entitled for?"

2. After receiving reference, notices were issiued to the parties. Ist party workman filed statement of claim at Page 8/1 to 8/5. Case of Ist party workman is that he is MA in sociology. He was appointed as Lower Division Clerk (Typist) at Jayant Project, Northern Coalfields Limited, Singrauli on 10-3-83 and was transferred to Amlohari Project in September 1985. He was promoted as UDC on 7-5-86. That he was active Trade Union Activists. He was taking up cases of the labours. He was involved in number of movements for betterment/upliftment and social/

financial gains of workers/employees working in the project. To expose management personnel, he had organized Dharna, protest rallies and mass movements and also sat on Dharna on 28-2-93. It caused shivering among the management personnel who feared exposure of their misdeeds. Workman submits that the management had taken pre-calculated steps and he is trapped. He was deliberately transferred to Mining Wing on 1-3-93. However he joined said assignment on 5-3-93. He was allotted work. On 6-3-93 one chargesheet was served on him. He submitted reply to the chargesheet. Fringy enquiry was formally conducted to harm him. He was not shown Enquiry Report. On enquiry, he was reverted as LDC on 31-3-93. The dispute was raised before ALC.

3. The workman has contented that he was not allowed to be represented by Defence Assistant. The principles of natural justice were not followed. The charges framed against him were fabricated. The charges were of fringy nature. His transfer to mining wing was calculated. One more chargesheet was issued to him. Both the enquiries were conducted against him. The enquiries are vitiated as he was not given proper opportunity for his defence. on such grounds, workman submits that order of dismissal of service be set-aside. He may be reinstated with back wages.

4. IInd party filed Written Statement at Page 9/1 to 9/6. Case of IInd party is that on 20-2-93 around 10.30 AM, workman misbehaved and abused on security department as security inspector particularly. He was drunken. He also shouted slogans abusing Mr. Chandra and S.Kumar by their names. The reply submitted by workman to the chargesheet was not satisfactory, enquiry was conducted against him. Shri N. K. Agrawal was Enquiry Officer, B. Kumar was Management Representative. The enquiry was fixed on 10-3-93, 17-3-93, 22-3-93, 24-3-93. The workman insisted that Jani Mahendra Singh as a Defence Assistant. He was not employee from different unit. His request was not accepted. Enquiry was conducted following principles of natural justice. Enquiry Officer submitted his report that charges against delinquent employee are proved. Considering the report submitted by Enquiry Officer and documents of Enquiry Proceedings, punishment was imposed.

5. IInd party further submits that Ist party workman had committed another misconduct of serious nature on 21-3-97 bringing outsiders to the project area blocking main road to the mine. The employees and negligence could not go to the project for their duties. Chargesheet was issued to workman on 20-3-95 for said misconduct. Said enquiry was also conducted and punishment of dismissal was imposed. As the workman is dismissed from service, the punishment of reduction in rank has become infructuous. IInd party further submits that if enquiry is found vitiated, management be permitted to prove misconduct.

6. Ist party workman filed rejoinder at Page 11/1 to 11/6 reiterating its contentions in Statement of Claim. That he was not given proper opportunity for his defence, enquiry is vitiated. Charges against him are fabricated. The punishment of reversion be set aside.

7. Management also filed rejoinder at Page 10/1 to 10/6 reiterating its contention in Written statement denying all material contentions of workman about victimization of his Union activities.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :

(i)	Whether the action of the General Manager, Amlohri Project, NCL Sidhi (MP) in imposing punishment of demotion on Shri Ram Lallu Gupta from UDC to LDC is proper and legal?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order

REASONS

9. Before dealing with Point No.1, it must take note that enquiry conducted against workman is found illegal as per order dated 22-6-2010 by my predecessor. Management was allowed to prove misconduct in Court. The documents of enquiry Proceedings are produced by both sides. The workman produced Exhibit W-1, W-1(a), (b), W-2. Documents produced by management are Exhibit M-1 to M-10. Copy of chargesheet Exhibit M-1 shows charges against Ist party workman are as per clause 26.4, 26.16, 26.18, 26.22 of standing orders. The copy of standing order is also produced for my perusal. Clause 26.4 deals with Gambling, drunkenness, fighting or riotous disorderly behaviour either at his place of work or at the colliery. Clause 26.16 deals with making false allegations against superior or an officer of the company without justification. Clause 26.18 deals with assault, attempt to assault, threatening to assault or abuse a co-worker. Clause 26.22 deals with deliberate act which is subversive of discipline or which may be detrimental to the interest of the company.

10. The management in order to prove above charges filed affidavit of evidence of Subhash Chandra Rai. Said witness in his affidavit of evidence has stated on 20-2-93, around 10.30 AM, delinquent workman had entered in office and abused using indecent language to the security officer, security staff, General Manager. He had come in front of security office while abusing. That hunger strike was organized at Main gate of office of General Manager. The workman was alleging on loudspeaker. However the witness has not stated particulars of abuses. In his cross-examination, witness

states that Ist party workman was not intoxicated. When workman entered in office, he was at the gate. When he entered the office, Suresh Kumar was in the office. In next question, he says that his vision is not clear due to glaucoma. He denied that he was deposing against workman as he was promoted out of turn. Form evidence in cross-examination of witness Subhash Chandra Rai, it is clear that workman was not intoxicated.

11. However management's witness Suresh Kumar in his affidavit of evidence has stated that on 20-2-93 at 10.30 AM, Ramlallu Gupta entered the security office. He was abusing that all security staff were thief. He was not able to properly walk, workman was intoxicated. At the time of said incident, scating was organized in front of the office of General Manager. That workman was loudly abusing that Security Officer and General Manager were thief and Security Officer was scoundrel of General Manager Ishwar Chandra. In his cross-examination, the witness says that he was along security officer. He was on duty for 24 hours. His attendance was maintained. He did not report incident to police neither the workman was referred for medical examination to Colliery Medical Officer. That he did not report incident to the police. That he had submitted application Exhibit M-1(a) . the cross-examination of witness is silent about incident narrated by witness that the workman had abused. However the evidence of this witness that workman was intoxicated cannot be believed as the workman was not referred to Medical Examination to any Doctor, incident was not reported to police. However in his evidence about incident of abuses was not challenged in cross-examination. such part of evidence finds further corroboration with Document Exhibit M-1(a) produced on record.

12. The evidence of 3rd witness Shri S.N. Pandey also on the point that the Ist party workman was abusing Security Staff saying that the power did not belong to anybody. Suresh Kumar, General Manager Ishwar Chandra and Security Officer were thief. Said abuses were also repeated on mike by the delinquent. In his cross-examination, above witness says he was Security Inspector. His duty was to protect property and employee of the company. The incident would have occurred. The FIR used to be submitted by the Security Officer. He denies that on 20-2-93, he was not on duty. That the Ist party workman was Secretary of the Union. Said Union is recognized by Central Govt. but it was not recognized by NCL. FIR was not submitted him about the incident. He denies suggestion of giving false evidence. Witness MW-4 Bachan Singh corroborated evidence that workman was abusing General Manager Security Officer that they were thief. However Bachan Singh has not been cross-examined.

13. The evidence of workman on affidavit is by way of denial and false implication of Union activities. The Ist party workman says that he has no enmity with Shri S.N. Pandey, Subhash, Suresh Kumar. That he was dismissed from service from 14-4-95. He was residing in quarter but not paying rent. That witnesses Suresh Kumar and S.N. Pandey are not his friends. It is denied that FIR was submitted by the General Manager about threat given on telephone to his family members.

14. The evidence discussed above is not sufficient to prove that the Ist party workman was intoxicated. Thus charge under Clause 26.4 cannot be proved. Abusing superior officer and security staff that they were thief is corroborated by all witnesses. The evidence is sufficient to prove charge under clause 26.16. the evidence of all witnesses of management is not disclosing that the loss was caused to the colliery. However the evidence shows that the workman has abused security staff and General Manager. Thus the evidence make out charge under clause 26.18, charge under clause 26.4, 26.12 cannot be made out from the evidence discussed above. The Enquiry Officer did not considered the evidence. Therefore the finding of Enquiry Officer that charge under clause 26.4, 26.12 proved against workman cannot be upheld. Workman has been reverted in view of the findings submitted by the Enquiry Officer. The charges against workman are proved. Therefore action of the management of IInd party cannot be said legal. Accordingly I record my finding on Point No.1 in partly Negative.

15. **Point No. 2 :** In view of my finding on Point No.1, charge under Clause 26.4, 26.12 against workman are not proved from evidence on record. However charge under clause 26.18 abusing and saying security officers and Manager as thief is covered under clause 26.16, 26.18 of standing orders. Question arises whether the order of punishment of reversion from UDC to LDC is proper and justified? The charges proved are only of abusing Security Staff and General Manager. No loss is caused to the property of the colliery, incident was not reported to police. Considering the evidence on record, the punishment of reversion appears disproportionate. Standing orders provides punishment under Clause 27.1(a) –warning, reprimand, censure, (b) fine, (c) suspension without wages for a period not exceeding 10 days, (d) stoppage of increment without cumulative effect, (e) stoppage increment with cumulative effect, (f) demotion to a lower stage or a lower grade, (g) removal/discharge from service and (h) dismissal from service. Considering the proved misconduct under clause 26.16, 26.18 of the standing orders, punishment of censure under Clause 27.1(a) would be appropriate. Accordingly I record my finding on Point No. 2.

16. In the result, award is passed as under :

(1) Action of the IInd party management imposing punishment of reversion is not proper.

(2) For proved charges under Clause 26.16, 26.18 of standing orders, said act of Ist party

workman is censured. The order of reversion of Ist party workman is set aside.

R. B. PATLE, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 564.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार साउथ ईस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 80/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/52/1996-आईआर (सी-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 564.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 17/01/2014.

[No. L-22012/52/1996-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/80/97

Presiding Officer : Shri R. B. PATLE

Shri Maksood Alam,
Ex.SDL Operator, Lusai Camp,
Qr. No. 2, Post Kotma,
Distt. Shahdol (MP) ...Workman

Versus

General Manager,
South Eastern Coalfields Ltd.,
Sohagpur Area,
Post Dhanpuri,
Distt. Shahdol (MP) ...Management

AWARD

Passed on this 6th day of December, 2013

1. As per letter dated 10-3-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/ 52/96- IR(C-II). The dispute under reference relates to:

" Whether the action of the Sub Area Manager, Bangwar Project of SECL Sohagpur Area in dismissing Shri Maksood Alam, SDL Operator, T.No. 239, Bangwar Project w.e.f. 13-4-95 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 2/1 to 2/6. The case of Ist party workman is that he was working as SDL Operator Bungwar Project, Sohagpur Area. Earlier he was working at Hirad Mines, Jamuna Kotma Area. He was transferred to Bangwar Project alleging certain misconduct. He was working at Bungwar Project just a day before alleged incident i.e. from 26-5-94. He was allotted work of operating SDL Machine on 25-5-94. The workman submits that the maintenance of machines was not done regularly. The SDL machines was not in running condition. SDL machine given to him was heavy machine used for excavating purpose. The cable of said machine was connected to electrical fuse circuit. The said machine is required to be operated with 3rd degree of care. The headlight, backlight, dump switch, driver switch were not functioning. Cable of machine instead of being connected through circuit breaker was attached directly to main switch. It was dangerous to life to operate the machine. That there was no head cable covering the seat of driver. The head cover was missing. The workman further submits that when workman said dangerous machine was handed over to him on 26-5-94 (night shift), workman pointed out the security aspect to the concerned Manager that it was dangerous for his safety. He has also approached Manager to replace said machine. Workman asked his safety while on duty. He was forced to leave duty. He was paid ½ day salary of the day. He had represented safety aspects to Director of Mine(Safety). He received reply on 29-6-94 assuring enquiry in the matter.

3. Ist party workman further submits that he was not allowed duty on the day he complained about inadequate safety measures in night shift of 24-5-94. Chargesheet was issued to him on next day alleging willful insubordination of reasonable orders of superiors, willful neglect of work, willful and subversive Act, abatement of any Act of misconduct. Workman contents that he had submitted reply denying the charges. He was falsely implicated in chargesheet. There was no reason for it to instigate other workman, no loss of production was passed. Enquiry was not properly conducted. Services were terminated on biased report of Enquiry Officer. On such ground, workman prays for his reinstatement with consequential benefits.

4. IInd party filed Written Statement at Page 4/1 to 4/8. Claim of Ist party workman is totally denied. IInd party did not dispute that the workman was working in Bungwar Project as SDL Operator. He was transferred from J & K Area on 24-5-94. That operation of SDL machine is

important for production of coal. The SDL machines are working round the clock in 3 shifts. Unless all parts of SDL machines are kept in good condition, there cannot be loading of coal. That IInd party claims to be fully conscious of safety measures to keep machines in good condition. Enquiry was properly conducted. The management's witness were cross-examined by co-worker of Ist party. Principles of natural justice were followed. It is alleged that after joining duty, workman instigated other SDL operators not to go out the mine on pretext of SDL machines were not in operative conditions. That after receiving findings of Enquiry Officer, the charges were proved. Workman was dismissed from service considering gravity of misconduct. The chargesheet was issued on 27-5-94. It is alleged that workman was in habit of disrupting work and create problems. The contentions of workman that SDL machines were not in working condition is afterthought. That workman had provocated co-workers to stop working on the SDL machine used in the mine. Loss of production was caused. IInd party has reiterated that the SDL machines were in good condition and workman had provocated other SDL operators not to go down. Loss of production was about 60-70 times. On such grounds, IInd party submits that workman is not entitled to reliefs claimed.

5. Workman file rejoinder at Page 5/1 to 5/5 reiterating his contentions in Statement of Claim. That when he pointed out SDL machines were not in working condition and is concerned for safety, he was falsely implicated, the enquiry was not properly conducted. He was not given full opportunity for his defence.

6. IInd party filed reply to rejoinder at Page 8/1 to 8/3 contending that the enquiry was properly conducted. Workman had instigated other SDL operators not to go down in mine for work.

7. Parties adduced evidence. Preliminary issue is decided by my predecessor as per order dated 31-5-2010, the enquiry is found proper and legal.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :

(i)	Whether the misconduct alleged against workman are proved from evidence in Enquiry proceedings?	Affirmative
(ii)	Whether punishment of dismissal imposed on workman Maksood Alam is proper and legal?	Affirmative
(iii)	If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

9. As stated above, the enquiry conducted against workman is found legal and proper. The question remains for decision whether the charges against workman are proved from evidence in Enquiry Proceedings. Whether punishment of dismissal imposed against him is legal and proper. As per document Exhibit W-1, charges against Ist party workman are of disobeying reasonable order of the superiors without justified reasons, deliberately avoiding the work, committing any act of indiscipline. The record of enquiry shows that management's witnesses were cross-examined by the co-worker. The record of Enquiry proceedings at Page 9/4 is copy of the chargesheet. Exhibit M-6 is copy of standing orders covering the misconduct. Statement of management's witness Sharad Dixit is recorded in enquiry at Page-8 of the Enquiry proceedings. Management's Witness Sharad Dixit stated that on 26-5-94, 3rd shift, Maksood Alam instigated all SDL Operator not to go for work. All the SDL Operators were called together. After his heavy persuasion, SDL operators had come for work, the work was started after 2 hours. The cross-examination of said management's witness by co-worker shows that the management's witness was asked date, time of the alleged incident and other details for how much time the work was not stated. Sharad Dixit Management's witness stated that he had submitted complaint. The entire cross-examination of Management Witness Sharad Dixit doesnot show that the SDL machine was not in operative condition. The workman has pressed for safety concern. The cross-examination of management's witness Rajendra Shukla also doesnot show any question asked to him, SDL machines were not in working condition. The contentions of Ist party workman in that regard appears afterthought. The statement of workman was recorded at Page 15. Workman had claimed that he was absent in night shift of 24-5-94. The evidence of management's witnesses is consistent that Ist party workman had instigated other SDL machine operator not to resume work. The evidence is consistent that the SDL machines work could not be started for about 2 hours. The workman was transferred just a day before because of the instigation of other SDL operators, the work in night shift could not be started for about 2 hours. The misconduct alleged against workman is proved from evidence of the management's witnesses therefore I record my finding in Point No.1 in Affirmative.

10. **Point No.2**

Enquiry against workman is found proper and legal. In view of my finding on Point No.1, the charges against Ist party workman are proved from evidence in Enquiry Proceedings. Notes of arguments are submitted on behalf of workman contending that workman was transferred a day before the SDL machine was not in working condition. Workman was immediately suspended after issuing chargesheet but evidence is manipulated about attendance

of workman. I do not find substance in those argument. The misconduct alleged against workman is proved. Thus the question arises is whether the punishment of dismissal of workman is proper. The evidence shows that 8 other operators on SDL machines had not reaching work at instigation of workman. Certainly the production of coal was affected. The evidence of management's witness shows that the production loss was about 60-70 tons. Misconduct of Ist party workman proved from evidence doesnot deserves any leniency. No interference is called for in the order of dismissal. For above reasons. I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under :

(1) Action of the Sub Area Manager, Bangwar Project of SECL Sohagpur Area in dismissing Shri Maksood Alam, SDL Operator, T.No. 239, Bangwar Project w.e.f. 13-4-95 is proper.

(2) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 565.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्डस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 110/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/51/1993-आईआर (सी-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 565.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 110/1993) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL and their workmen, received by the Central Government on 17/01/2014.

[No. L-22012/51/1993-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/110/93

Presiding Officer : Shri R.B. PATLE

General Secretary,
M.P.k.M.P. (HMS),
PO Junnardeo,
Distt. Chhindwara (MP) ...Workman/Union

Versus

Manager,
Rakhikol Colliery of WCL,
Kanhan Area,
PO Rakhikol,
Distt. Chhindwara (MP) ...Management

AWARD

Passed on this 4th day of December, 2013

1. As per letter dated 7-6-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/51/93-IR(C-II). The dispute under reference relates to:

> "Whether the action of the management of Rakhikol Colliery of W.C.Ltd., Kanhan Area, PO Rakhikol, Distt. Chhindwara (MP) in dismissing Shri S.K.Balam, S/o S.K.Chhindami, casual employee from services w.e.f. 1-8-89 is justified? If not to what relief the worker is entitled to?"

2. After receiving reference, notices were issued to the parties. Union filed Statement of claim at Page 4/1. Union submits that Ist party workman Balam was working as permanent General Mazdoor for 6 years. The work is of permanent nature. He was appointed at Ghodawari colliery in 1984. Workman was transferred to Damoh colliery on 22-12-84, again he was transferred to Rakhikol colliery. Workman was injured while on duty at 33/34 Rakhikol collieiry underground mine in 1986. Workman was under treatment in company's hospital for long period. He was not cured of his broken shoulder. Workman has become weak. Workman has given application for his transfer to other place. Workman though attended duty gradually became weak. He was receiving treatment. The ratio of his absence was increasing more and more. He had submitted medical certificates.

3. That chargesheet was issued to workman on 23-4-89. Workman had attended enquiry proceedings on 13-6-89. However the management remained absent. He claims that he had received knowledge about the decision for dismissal from service. Workman claims that his services re terminated without notice is illegal. That termination of his services without giving him opportunity is illegal. On such grounds, workman prays for his reinstatement with consequential benefits.

4. IInd party management filed Written Statement at Page 6/1 to 6/3. IInd party management totally denied claim of workman. It is concluded that Ist party workman was casual employee. He was discriminated as General

Mazdoor. He never put in 190/240 days attendance in service of Rakhikol Colliery. He was in habit of absent in duties. Inspite of warnings issued to him, Ist party workman failed to improve himself. Chargesheet was issued to him on 23-4-89. Allegations were of habitual absence without leave etc. the workman was not punctual in attending duties. The charges were explained to him. The Enquiry was conducted by Enquiry officer J.D. Jingal. That Ist party workman worked for 84.34 days in 1987, 32 days in 1988, 9 days in 1989. It is denied that the workman was working 305 days in the preceding calendar year. That enquiry was conducted. Opportunity for defence was not given to him.

5. IInd party denies contention of workman that chargesheet was not served on him or no opportunity was given to the party in the enquiry for his defence reiterating that enquiry was conducted giving full opportunity for defence to workman. The misconduct was proved, IInd party submits that workman is not entitled to relief claimed by him.

6. Workman filed rejoinder at Page 7/1 reiterating his contentions in Statement of Claim. He submits that the contentions of management are incorrect. He received treatment for the minor injuries. That dismissal of workman is wrong, no enquiry was conducted against him. He was orally terminated from service.

7. My predecessor vide order dated 9-5-2012 held enquiry conducted against workman as legal and proper.

8. Considering pleadings and findings on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :

(i) Whether the charges of misconduct alleged against workman are proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment awarded against workman is proper and legal?	In Affirmative
(iii) If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

9. As discussed above, the enquiry conducted against workman is found legal. Other issues needs to be decided - Whether the charges of misconduct alleged against workman are proved from evidence in Enquiry proceedings, whether the punishment awarded against workman is proper and legal. Workman has not adduced evidence on other issues. The record of Enquiry Proceeding is produced. Page 17/3 shows that workman had admitted his mistake and beg to be excused. He has given reasons for his defence that he was residing at Datla West. He was not residing at Rakhikol Quarter. He was required to walk from Datla to Rakhikol and facing hardship. It was reason for his absence from duty. He was also suffering from cough, bronchitis, these were the causes of his absence from duty. The management's witness Kishorilal has narrated working days of Ist party workman as 84.34 days in 1987, 32 days in 1988, 9 days in 1989. In his cross-examination, management's witness says that any medical certificate was not submitted by workman requesting leave. Statement of workman was also recorded. He has admitted his absence from duties. He has further stated that because of his illness and he was required to attend his mother, were the reasons for absence from duty. The misconduct alleged against workman of unauthorized absence is proved from evidence in Enquiry Proceedings. Therefore I record my finding in Point No.1 in Affirmative.

10. **Point No. 2**

In view of my finding in Point No.1 that alleged misconduct of unauthorized absence from duty is proved, management's witness has stated working days of workman were 84.34 days in 1987, 32 days in 1988, 9 days in 1989. Considering the working days of the workman, it is clear that his absence from duty was without application, without explanation, without satisfactory reasons appears to be of serious nature. Therefore punishment of dismissal does not call for interference. For above reasons, I record my finding in Point No.2 in Affirmative.

11. In the result, award is passed as under :

(1) Action of the management of Rakhikol Colliery of W.C. Ltd., Kanhan Area, PO Rakhikol, Distt. Chhindwara (MP) in dismissing Shri S.K. Balam S/o S.K. Chhindami, casual employee from services w.e.f. 1-8-89 is proper.

(2) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 566.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एनसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 139/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/145/1996-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 566.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 139/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial

dispute between the management of NCL and their workmen, received by the Central Government on 17/01/2014.

[No. L-22012/145/1996-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/139/97

Shri R.B.PATLE, Presiding Officer

The Vice President,
Coalfields Labour Union (CITU),
Qr. No. B-177, Amlohari Project,
PO Amlohri, Distt. Sidhi ...Workman/Union

Versus

Chief General Manager,
Northern Coalfields Ltd.,
Amlohari Project,
Distt. Sidhi (MP) ...Management

AWARD

(Passed on this 3rd day of December 2013)

1. As per letter dated 20-5-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012/145/96-IR(C-II). The dispute under reference relates to:

> " Whether the action of the management of Amlohari Project of NCL in dismissing Shri Ram Lalloo Gupta LDC from services w.e.f. 15-4-95 is legal and justified? If not, to what relief is the workman entitled and from which date?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/5. The case of workman is that he is MA in sociology. He was appointed as Lower Division Clerk (Typist) at Jayant Project, Northern Coalfields Limited, Singrauli on 10-3-83 and was transferred to Amlohari Project in September 1985. He was promoted as UDC on 7-5-86. That he was active Trade Union Activists. He was involved in number of movements for betterment/ upliftment and social/financial gains of workers/employees working in the project. To expose management personnel, he had organized Dharna, protest rallies and mass movements and also sat on Dharna on 28-2-93. It caused shivering among the management personnel who feared exposure of their misdeeds. Workman submits that the management had taken pre-calculated steps and he is trapped. He was deliberately transferred to Mining Wing on 1-3-93. However he joined said assignment on 5-3-93. He was allotted work on 6-3-93. On same day, one chargesheet was served on him. He submitted reply to the chargesheet. That formal enquiry was conducted to harm him. He was not shown Enquiry Report. On the basis of fringy enquiry, he was reverted as LDC on 31-3-93. Another chargesheet was served on him on 20-3-95. He submitted his reply on 31-3-95. The enquiry was pre-determined to implicate him. That he was not given reasonable opportunity, exparte enquiry was conducted. Enquiry Report was not furnished to him vide order dated 14-3-95, he was dismissed from service. The appeal preferred by him was also dismissed on 4-5-95. The dispute was referred on failure of conciliation proceeding. The workman submits that enquiry conducted against him was not legal, principles of natural justice were not followed, he was not given opportunity for his defence. the charges are not proved. On such ground, he prays for setting aside order of his dismissal.

3. IInd party management filed Written Statement at Page 6/1 to 6/10. The contentions of IInd party are that workman is habitual offender. He always tries to break law. Workman spread indiscipline amongst working class. He threatened and abused officers of the company. Workman tries to spread industrial unrest without reason. All the time management showing leniency to him with hope to the workman would improve himself. Workman several times created obstacles, tried to initiate illegal strike. That on 28-2-93, he misbehaved and abused all Security Department and Security Inspector. He had shouted the slogans against Shri Chandra and S. Kumar. The explanation called from workman was found not satisfactory, enquiry was conducted against him. Enquiry Officer submitted his report on 21-3-93 holding that charges against workman are proved. Workman was reverted from post of UDC to LDC. The Central leadership of the Union had taken up said matter.

4. Next it is submitted that there was no improved in conduct of the workman. On 27-3-95, he committed major misconduct bringing outsiders to the project area and blocking the main road to the mine due to which employees and executives of the project could not go for their duties which has adversely affected the coal production. Chargesheet was issued to workman on 20-3-95 for said misconduct. Enquiry was conducted following principles of natural justice. Workman further insisted for Defence Assistant D.N. Sharma from Jayant Project could not be allowed. The Enquiry Officer recorded evidence and submitted his findings that charges were proved. Considering the proved charges and documents, punishment of dismissal from service was imposed on 14-4-95. The appeal preferred by workman was dismissed. IInd party submits that punishment is properly imposed does not call for interference. IInd party prays for rejection of claim.

5. Workman filed rejoinder at Page 9/1 to 9/6 reiterating his contentions in Statement of claim.

Management filed rejoinder at Page 8/1 to 8/6 reiterating its contention in Written Statement filed earlier.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :

(i)	Whether the action of the management of Amlohari Project of NCL in dismissing Shri Ram Lalloo Gupta LDC from services w.e.f. 15-4-95 is legal and justified?	In Negative
(ii)	If not, what relief the workman is entitled to?	As per final order.

REASONS

7. Before dealing with Point No.1, I am to state that enquiry conducted against workman was found vitiated as per order dated 22-6-2010 by my predecessor. IInd party was permitted to prove misconduct in Court.

8. Management filed affidavit of evidence of witness Shri Shiv Kumar Sahu. Said witness says that he was working as Driver on 27-3-95. When he was driving bus carrying employees if Ist shift to the mine, security jeep was seen by him. Hawaldar Shri D.K.Singh told him to drive near Durga Pandal. To be specific said witness has state that while he was driving bus behind the jeep, several persons with lathis stopped the bus. The bus was stopped the obstructions were kept at the wheels of the bus. Those persons were threatening to damage the bus, beat driver. The persons involved in obstruction to the bus were arrested by police. Those persons were taken in bus to police station. Shri Shiv Kumar is not cross-examined.

9. Other witness Shri R.K.Tiwari in his affidavit of evidence has stated that in night of 26-3-95, the roads going to the colliery were obstructed. He had given its information to Security Officer Mr. Yadav. The information was also given on written to the Dy.General Manager. Those persons has stopped the bus near Coal Yard. The crowd of people had kept articles at the wheels. They were threatening to break glass of bus, to beat the drivers. That Ramlallu Gupta was leading the mob of all those persons. In his cross-examination, witness says that distance between Coal Yard and Mine is 2 ½ Kms. There is other approach road passing to the mine from Nursery side. On 27-3-95, he reached too the Coal Yard. The bus was stopped at Coal Yard. That miners entered the mine with permission of the Manager. That he has not produced documents about loss suffered by the mine. That if employee in Ist shift fails to attend, the employees in IInd shift are given overtime. In cross-examination of this witness, inspite of the fact that the buses were obstructed and given threats for damage, beating the driver, the workman was leading the mob is absolutely not challenged. Any question is not put to the witness on abovepoints. Therefore the evidence of this witness about workman leading mob blocking the roads for approaching the mine cannot be disbelieved. Rather I find no reason to disbelieve evidence of this witness on the above point. Loss suffered by the mine is not disclosed from the evidence of the witness. Its note can be taken.

10. The evidence of management's witness Shri B.L.Tripathi is also on the point that on 27-3-95 around 3 AM, Ramlallu Gupta Ist party workman was present along with villagers blocking the road near Nursery, its information was given to the higher officers. That Ramlallu Gupta obstructed the road, when the road was opened the traffic could be started. That Ramlallu Gupta had not allowed the bus to proceed in colliery area. The buses were stopped with the employees. The cross-examination of this witness also, the incident of blocking road to the buses is not challenged. Above witness in his cross-examination says if any incident occurs, he received instruction from his superior. The crowd blocked the road. The request of security guard was not considered by them. He claims ignorance as to what happened on 27-3-95 3 AM to 2 PM. The evidence of this witness is not clear on the point of loss suffered to the mine.

11. The evidence of Punnu Singh Kokariya, Ashvini Kumar, and evidence of workman himself is by way of denial of the incident. Both the witnesses of the workman did not claim that they were present at the place of incident in the night of 27-3-95. The evidence of management's witness is silent about the Ist party workman was intoxicated. Both the witnesses of the management says that Ist party workman is not drinking liquor they are pressing for his Union activities. However the evidence of the witnesses of the workman is about his appreciation of Union activities and supporting the cause of workers. It cannot be the reason for discarding both the witnesses of the management. The charges against workman are disclosed in Exhibit M-1 produced by management. The charges are under Clause 26.15, 26.18, 26.22, 26.23, 26.27, 26.30 & 26.43. Clause 26.15 deals with violation of mines Act or other act or rules, 26.18 deals with causing injuries to the co-employees or other employees, threatening, abusing etc. Clause 26.22 deals with intentionally committing act causing loss to the company. Clause 26.23 also deals with causing loss to the company by damage. Clause 26.27, 26.30, 26.43 deals with causing danger to life of other person. Clause 26.30 deals with unauthorized absence from duties and violation of any rules. The evidence discussed above cannot establish charge under Clause 26.18, 26.27, 26.30 & 26.43.

12. The evidence of management's witnesses is cogent that in the night of 27-3-95, the delinquent workman was leading crowd, blocking road, not allowing the bus carrying employee. Certainly it would stop production in the Ist shift of the mine. Though the exact loss caused is

not stated by the witnesses, the coal production in Ist shift on 27-3-95 was affected. The evidence of the witnesses of the workman that he is representing causes of the employees is active member of the Union and office bearer of several other Union. Genuine Union activities are to be appreciated. However one cannot take law in their hand. There are various ways of expressing for the redressal of the employee. Ist party workman has not produced any document what was the grievance he was trying to resolve and agitations were held by him. The violent act cannot be justified for redressal of demands of the employees. The peaceful agitation can be followed and other modes of peaceful agitations are available. Blocking road resulting in causing loss to mine is certainly misconduct covered under Clause 26.15, 26.22 & 26.23. Enquiry Officer did not take care to appreciate the evidence on record. Therefore the findings of Enquiry Officer that the charges under clause 26.18, 26.27, 26.30 & 26.43 are proved is incorrect. The evidence discussed above cannot prove the charges under clause 26.18, 26.27, 26.30 & 26.43. Therefore I record my finding on Point No.1 partly in Negative.

13. **Point No. 2 :**

In view of my finding in Point No.1, charges under Clause 26.15, 26.22, 26.23 proved against Ist party workman, the propriety of punishment of dismissal needs to be considered. The charges proved against workman relates to blocking the road, approach roads of the colliery consequently affecting the coal production. The evidence of the witnesses is silent that the workman or the persons in crowd led by him caused any damage to the property of the colliery. Copy of standing orders is made available for my perusal. It provides different punishment under clause 27. Standing orders provides punishment under Clause 27.1 (a)–warning, reprimand, censure, (b) fine, (c) suspension without wages for a period not exceeding 10 days, (d) stoppage of increment without cumulative effect, (e) stoppage increment with cumulative effect, (f) demotion to a lower stage or a lower grade, (g) removal/discharge from service & (h) dismissal from service. In my considered view, the punishment of dismissal would be too harsh, punishment of demotion to lower grade in time scale would be appropriate considering the facts of the case. The order of dismissal needs to be set aside. Question arises whether workman should be allowed back wages. The evidence of witnesses of the management as well as the evidence of the workman does not show that workman was engaged in gainful employment workman had denied that after his dismissal, he was working with contractor. Considering the proved misconduct, no doubt back wages cannot be granted at the same time gravity of misconduct needs to be considered while imposing punishment. The punishment of dismissal appears not proper in the facts and circumstances of case. Workman was not in gainful employment. However misconduct under clause 26.15, 26.22, 26.23 are proved from evidence before Court. Therefore allowing full back wages would be premium for proved misconduct. In my considered view, allowing 25 % back wages would be appropriate. Accordingly I record my finding in Point No. 2.

14. In the result, award is passed as under:-

(1) Action of the management of Amlohari Project of NCL in dismissing Shri Ram Lalloo Gupta LDC from services w.e.f. 15-4-95 is illegal.

(2) Order of dismissal of workman is set aside. Ist party is reverted to LDC from date of order of his dismissal i.e. 15-4-95. IInd party is directed to reinstate workman as LDC with continuity of service with 25 % back wages on the post of LDC.

R. B. PATLE, Presiding Officer

नई दिल्ली, 17 जनवरी, 2014

का.आ. 567.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार साउथ ईस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 214/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/313/1994-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th January , 2014

S.O. 567.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 214/1994) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 17/01/2014.

[No. L-22012/313/1994-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/214/94

Presiding Officer : Shri R.B. PATLE

Secretary,
Indian Black Diamond Workers Federation,
Post Bisrampur Colliery,
Distt. Surguja (MP) ...Workman/Union

Versus

General Manager,
Bisrampur Area of SECL,
Post Bisrampur,
Distt. Surguja (MP) ...Management

AWARD

Passed on this 12th day of December, 2013

1. As per letter dated 17-11-94 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012(313)/94-IR-C-II. The dispute under reference relates to:

> "Whether the action of the Sub Area Manager, Bisrampur sub Area of SECL, Bisrampur Area in dismissing S/Shri Manik Minj S/o Shri Shamual Minj, security Guard, Kukeshwar Pandey S/o Jamuna Pandey Guard of Bisrampur colliery form company services w.e.f. 20-7-92 is legal and justified? If not, to what relief are these three workmen entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party employees No.1 to 3 filed statement of claim at Page 3/1 to 3/16. The case of Ist party employees is that employee No. 1, 2 were working as Security Guards and No. 3 was employed as Senior Security Guard at Bisrampur Sub Area of SECL. That IInd party is company owned by Government. That services of Ist party employees No. 1 to 3 were terminated without giving opportunity of hearing, without conducting or furnishing any documents. They were dismissed from 20-7-92. It is further contended that chargesheet was served on them on 17/22-4-93 the allegations were made that on 16-4-93 when they were deputed in main mansion of colliery in night shift between 11 PM to 7 AM, the patrolling police found that they were sleeping and Gun No. BBL-29414 were taken by police from spot. The matter was not reported by Ist party employee to the management neither they deposited Gun. The employees were informed that act on their part constitutes misconduct as per Clause 26.5 and 26.31 of standing orders. Ist party employee submitted reply to the chargesheet. The charges were denied by them. Workman submits that the charges alleged against them were false and concocted that enquiry was not conducted properly. They were not given opportunity for their defence. There was no evidence to prove the charges. The enquiry was conducted in absence of Defence Assistant Shri P.K. Jha. they were not given reasonable opportunity for their defence. Enquiry Officer was biased all the 3 employees have contented that the enquiry conducted against them was not fair and proper, enquiry is vitiated. The charges are not proved. Employees prayed for their reinstatement with back wages.

3. IInd party filed Written Statement at Page 5/1 to 5/6 denying relief prayed by Ist party employees. That employees were working as Security Guard in different grades at Bisrampur colliery of SECL. Chargesheet was issued to them. Enquiry was conducted vide different orders. The employees were terminated. The contentions of Ist party employees that enquiry was not properly conducted, the Enquiry Officer was biased, the enquiry was conducted in absence of Defence Assistant are denied. IInd party reiterated that enquiry was properly conducted. After chargesheet was issued, the Enquiry Officer was appointed and reasonable opportunity was given to the employees for their defence. That charges against Ist party employees are of serious nature, they were found sleeping during duty hours and the gun was taken from spot by State Police.

4. Management also filed rejoinder at Page 6/1 to 6/7 reiterating its contentions in Written Statement hat enquiry was properly conducted.

5. As per order dated 17-4-2001, my predecessor found enquiry conducted against workman proper and legal.

6. Considering pleadings between parties and finding on the legality of the enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the misconduct alleged against Iist party employee No.1 to 3 are proved from evidence in Enquiry Proceedings?	In Affirmative
(ii)	Whether the punishment of dismissal from service imposed against Ist party No.1 to 3 is proper and legal?	In Affirmative
(iii)	If so, what relief the workman is entitled to?"	Workmen are not entitled to any relief as claimed by them.

REASONS

7. My predecessor has found enquiry conducted against workman is proper and legal, question remains for decision is whether the misconduct alleged against workman is proved from evidence in Enquiry Proceedings. That whether punishment of dismissal imposed against workmen is proper and legal. The documents of enquiry are produced and collectively marked as Exhibit M-1. The report was submitted to Dy. General Manager by Security incharge on 16-4-93. That the Ist party employee No.1 to 3 were on duty in the night. The State Police found them sleeping. That Gun No. BBL-29414 was taken by State Police from delinquent employee. The chargesheet was served on employee. They denied charges against them. The Security Officer also submitted information to the Chief Mining Engineer that the delinquent employees were found

sleeping on duty by Police and Gun No. BBL-29414 was taken by police from the spot. The police had given information to him and gun was returned back. The statement of witnesses recorded at Page 7/13 to 7/16 finds clear reference that the delinquent employee were found sleeping and gun was taken by police. The above gun was returned back to the Security Officer the statements of delinquent employees were also recorded and explanation given by them appears quite inconsistent how gun from their custody was taken by police and returned to the Security Officer. No doubt, the nicety of recording evidence in judicial proceeding cannot be expected in Departmental Enquiry. The burden of proof in Departmental Enquiry is not similar as in criminal proceedings. The findings of Enquiry Officer are supported by findings of Security Officer that the police had found delinquents sleeping and gun in their custody was taken by police. Exercising powers of judicial review, it would not be proper on my part to sit as Appellate Authority and re-appreciate the evidence. The evidence in Departmental Enquiry is adequate to prove misconduct alleged against workman. Therefore I record my finding in Point No.1 in Affirmative.

8. **Point No. 2 :**

In view of my finding in Point No.1, the misconduct alleged against workman is proved and State police had taken gun in their custody from the spot. At the time of argument, learned counsel for IInd party Mr. Shashi submits that gelatin and other explosives were stored at the place the delinquent employees were kept on security as Guard. They were negligent in their duties. Considering gravity of misconduct proved against workman, the punishment of dismissal from service cannot be said shockingly disproportionate. The submissions of learned counsel for Ist party employees that the delinquent workmen was falsely implicated cannot be upheld considering evidence in Enquiry Proceedings. For above reasons, I record my finding on Point No. 2 in Affirmative.

9. In the result, award is passed as under:-

(1) Action of the Sub Area Manager, Bisrampur sub Area of SECL, Bisrampur Area in dismissing S/Shri Manik Minj S/o Shri Shamual Minj, Security Guard, Kukeshwar Pandey S/o Jamuna Pandey Guard of Bisrampur colliery form company services w.e.f. 20-7-92 is legal.

(2) Ist party employees are not entitled to relief prayed by them.

R. B. PATLE, Presiding Officer

नई दिल्ली, 23 जनवरी, 2014

का.आ. 568.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 39/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/82/1989-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 23rd January , 2014

S.O. 568.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 23/01/2014.

[No. L-22012/82/1989-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 2nd day of December, 2013

INDUSTRIAL DISPUTE No. 39/2003

Between :

The Vice President,
Mining Technical Staff Association,
H.No. C-32, Near Sector-1 Dispensary,
P.O. Godavarikhani – 505209 ...Petitioner

AND

The General Manager,
Area-1, Ramagundam Division,
M/s. Singareni Collieries Company Ltd.,
P.O. Godavarikhani-505209 ...Respondent

Appearances :

For the Petitioner : Party in person

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

In pursuance of reference dated 12.3.2003 vide order No. L-22012/82/89-IR(C-II) Government of India, Ministry of Labour and Employment has required this forum to decide the question under Sec.10(1)(d) of Industrial Disputes Act, 1947 with the following schedule:-

"Whether the demand of the Mining Technical Staff Association, Godavarikhani, for re-fixation/ protection of pay Sh. D. Krishna Murthy on his promotion as Shot Firer during 1980 and also for one increment is legal and justified? If yes, to what relief the workman is entitled to?"

2. After receiving the reference this forum has issued notice to both the Petitioner i.e., the Vice President, Mining technical staff association and the Management i.e., M/s. Singareni Collieries Company Limited. Both of them appeared before this forum.

3. The Vice President, Mining Technical Staff Association(who will hereinafter be referred to as Petitioner) has filed their claim statement unfolding the grievances of Sri D. Krishna Murthy (hereinafter be referred as workman)

with the averments in brief as follows:-

The workman joined the service of the respondent as casual worker on 29.9.76 and continued in that capacity till he got promotion as coal filler in October, 1978. He worked as coal filler from 1.1.1980 to 2.10.1980 and has drawn the mine average salary. On 19.9.1980 he appeared for examination of Shot Firer conducted by Government of India and was successful and then he was promoted as coal cutter Cat. V on 3.10.1980 with a starting basic pay of Rs.19.50 ps per day instead of Rs. 22.35ps which was the basic pay for the person who was acting as coal cutter, though he was drawing mine average of Rs. 22.35ps basic per day. Though he was promoted as coal cutter Cat.V his services were utilized as Shot Firer on the vacancy of leave from 3.10.1980 till 31.1.1981. He was promoted as Shot firer Gr.D with effect from 1.2.1981. At that time he was drawing basic pay of Rs. 531. He appeared for Mining Sirdar examination on 2.9.1987 and became successful. Then, he was promoted as Gr.C with effect from 1.1.1988. At this point of time he was denied one service increment on his promotion. Though his juniors who were promoted much later to him were drawing more salary than that of him. He raised grievances. Respondent considered his grievance and then he was promoted from 1.10.1987 as Mining Sirdar, instead of 1.1.1988 and he was given promotional increment and was paid correct salary from 1.10.1987. He has been regularly promoted from time to time and now he is working as Gr. B Mining Sirdar in the respondent company. In the Wage Board-II from 1.1.1979 to 31.12.1982 of four years vide Agreement circular No.49/ 3696/34.72 dt.17.9.1979 issued by General Manager, Kothagudem, mentioned for coal fillers-time rated jobs upto Cat.IV minimum basic only to be fixed and not mentioned anything about Cat.V. Petitioner has continuously worked on time rated categories such as Coal Cutter, Timber man and Pump Operator and was paid mine average wages. He has drawn, the following basic pays on time rated categories from January, 1980 to October, 1980 :—

Month	For Day Basic/ Muster	Total Wage Per Day	No. of Days Worked Month
January, 80	23-90	35.16	28
February, 80	23-93	34-69	22
March, 80	23-17	34-15	21
April, 80	22-80	34-61	24
May, 80	22-61	33-70	27
June, 80	21-65	32-68	26
July, 80	23-33	34-98	27
August, 80	22-15	34-86	28
September, 80	20-99	32-95	22
October, 80	22-08	34-17	2

The total basic drawn by the Petitioner per day works out Rs.227.21 for 10 months and his average basic comes to Rs. 22.72 ps.. In case the basic is counted for three months, it works out to Rs. 22.35ps per day. Whereas his basic pay was fixed in Cat.V at Rs.19.50 ps which is quite less than the amount which he was drawing prior to his promotion to Cat.V. At the same time Petitioner's colleague Sri B. Satyanarayana, Mining Sirdar, GDK 2 incline who was junior to the Petitioner was fixed with the basic of Rs.19.34 ps. per day on his promotion from Coal Filler to Timberman Cat. IV though the minimum basic fixed was only Rs.17.75 ps. and Rs.19.34 ps is the basic which was paid to the Petitioner on his promotion to Cat. V to Coal Cutter. At present said Sri B. Satyanarayana, is drawing an increment higher side than the Petitioner though he is junior to the workman. Further workman was promoted as Shot Firer in a Gr.D on a basic pay of Rs. 531 from 1.2.1981 though he passed his SF examination in September, 1980. Thereby he was denied one increment. Therefore respondent is to be directed to refix the salary of the workman taking into consideration of his basic pay as Rs. 22.35 ps per day from 1980 and also corresponding increments to the subsequent promotions and all other benefits and also to order for subsequent increments along with all benefits including difference of arrears.

4. **The Management filed their counter with the averments in brief as follows :**

As per the National Coal Wage Agreements, piece rated workmen i.e., coal fillers who were engaged on time rated jobs are being paid mine average wages. Workman was a coal filler in piece rated wages upto 3.10.1980. Further, he might have been paid mine average wages as and when he worked on time rated categories. But he is not entitled mine averages. As per the guidelines in vogue at any point of time mine average basic is not a part in fixation of Basic Pay when a coal filler was appointed/transferred to Coal Cutter. At no point of time the mine average wage was

taken for fitment benefits top the coal fillers who were appointed/transferred to daily rated wages. Initially the Government of India, Ministry of Labour and Employment, refused to refer the present dispute for adjudication. Only on the directions of the Hon'ble High Court of A.P., given at the instance of the Petitioner who filed WP No.10967/ 1991 this reference has been made. On his passing shot firer examination on 19.9.80 the workman was appropriately promoted from coal filler to the post of coal cutter with effect from 3.10.1980 and he was allowed a basic of Rs. 19.50ps as per the rules in vogue. His claim that his starting pay should be Rs. 22.30ps per day. He was drawing mine average of Rs. 22.30ps is not correct. Prior to implementation of National Coal Wage Agreement the coal fillers who were appointed as coal cutters were being given the minimum of Cat.V wages which is the appropriate category under National Coal Wage Board Agreements (NCWA). As per the work norms fixed under NCWA-I norms which came into force from 1.1.1975, the work load of fillers was fixed at 81 Cft and they were placed in Group VA. Their basic pay was fixed at Rs. 13. When NCWA-II had came into force from 1.1.1978, the work load of fillers in A.P., was fixed at 81Cft, they were placed in Gr. VA and the wage was fixed at Rs.18.50ps. The coal fillers appointed as coal cutters were fixed with the minimum basic Personal Assistant of Rs.19.50 ps. Thus, the coal cutters got the benefit of Rs.1/- like wise the workman when he was appointed as coal cutter category B was fixed in the scale of Rs.1950-0.72-28.14 under NCWA-II. Hence, his pay was correctly fixed in Cat.V. There was no anomaly in fixation of pay of Petitioner workman as coal cutter. Same procedure was followed for all other employees who were promoted as coal cutters. His contention that his juniors are drawing more salary with more basic both was promoted much earlier to them is not correct. Circular No. P.49/3696/3472 dt.17.9.1979 is not relevant to the case of the Petitioner. Further, it was superseded by the circular dt.15.7.80. The details of appointment and promotion of the Petitioner and Sri B. Satyanarayana are as follows:

	D. Krishnamurty (the Petitioner)		B. Satyanarayana, M.S., Gdk, 2A incli	
NCWA Period	Date of Appointment/ Promotions	Basic Pay Rs. Ps.	Date of Appointment/ Promotions	Basic Pay Rs. Ps.
NCWA-I	29-9-76 as causal worker	Piece rated wages	23-3-77 as causal worker	Piece rated wages
-Do-	1-3-77 as Coal Filler	-Do-	16-11-78 as Coal Filler	-Do-
NCWA-II	3-10-80 as Coal Cutter in Cat. V	19.5	10-4-81 as Timber Man in Cat. IV	19.34
-Do-	1-2-81 as Shot Firer Gr. D	531	—	—
NCWA-III	—	—	8-3-87 as Coal Cutter Cat. V	54.22
-Do-	—	—	1-5-87 as Shot Firer Grade D	1494
-Do-	1-10-87 as Shot Firer Gr. C	1522	1-10-87 as Shot Firer in Grade C	1582

The above referred particulars reveal the dates of appointment and promotions to various categories / grades of the workman and Sri B. Satyanarayana are different. Sri B Satyanarayana was in Cat.IV from 10.4.1981 to 8.3.87, whereas workman was appointed as coal cutter on 3.10.80, as such comparison of workman with Sri B. Satyanarayana is not correct and contrary to JBCCI guidelines which are applicable to all the employees working in coal industries of the country. As per the circulars issued to rectify the anomalies both employees must be placed in seniority and covered in the same seniority list in NCWA-III period for the purpose of rectification anomaly. In this case Sri B. Satyanarayana was in Cat. IV, whereas the workman was in technical and supervisory Gr.D. Thus, they were not in same pay scale and they were also not covered in the same seniority list of NCWA-III. Thus the workman can not claim that Sri B. Sathyanarayana, Mining Sirdar, Gdk. 2A Incline was drawing an increment higher side than to him. These guidelines are framed keeping the interests of all employees working in coal industry. Respondent company never discriminated the workman. After he became successful in the Sirdar examination depending upon the availability of the vacancy under satisfactory reported earned by him and considering

seniority etc., the promotion was affected as it will be done in the case of other employees. Petitioner's claim is not acceptable and is liable to be dismissed.

5. On behalf of the Petitioner WW1 was examined and exhibits Ex.W1 to W4 were marked. On behalf of the Management MW1 was examined and Ex.M1 to M16 were marked.

6. Heard the arguments of either party.

7. **The points raised for determination are:**

I. Whether the claim of Sri D. Krishna Murthy, the workman for re-fixation/protection of pay, on his promotion as shot firer during 1980 and also for one increment? Is legal and justified?

II. To what relief the workman is entitled to?

8. **Point No. I :**

As can be seen from the contentions of the Petitioner and the counter contentions of the respondent / Management referred to above, it is very much clear that it is an undisputed fact, that the workman has been drawing the wage @Rs. 22.35 ps per day as on the date of his being promoted/appointed/transferred as coal cutter from the post of coal filler with effect from 3.10.1980 but, without protecting the said wage, his pay was fixed in the minimum basic available for the post of coal cutter i.e., Rs.19.50ps. He suffered the said anomaly all these years and has chosen to make his claim to rectify the said defect only by raising the present dispute.

9. As can be gathered from the record, in the beginning, considering the delay in making the claim only, the Ministry has chosen to refuse to make the reference. But, the fact remains that Industrial Disputes Act, 1947 does not fix any time limit for raising such disputes. Therefore, merely on the ground that there is delay in making the claim, such disputes can not be refused to be entertained. As can be seen from the contentions in the counter filed by the respondent, respondent is claiming that since there is substantial delay in the making the claim also, the same can not be sustained. This contention is not acceptable.

10. As already observed supra, respondent is not disputing the correctness of the contentions of the Petitioner that , the workman has been earning the wage of Rs. 22.35ps per day while working as coal filler and as on the date of his being appointed as coal cutter i.e., 3.10.1980 but, without considering the same and taking the minimum pay available for the post of Coal cutter i.e., Rs.19.50ps the pay of the workman was fixed in the post of coal cutter. For this action the reason given for the respondent is that as per the guidelines in vogue as on that day only the pay was fixed.

11. While the workman as WW1 was under cross examination it put to him that Ex.W1 circular is not applicable to him. He denied the truth of the same. Thus, it is his claim that National Coal Wage Agreement-II(NCWA-II) is applicable to him. For what reason the same is not applicable to him is not explained by the respondent. MW1, while under cross examination has stated that piece rated wages were paid to the workman as per mine average wages and as per National Coal Wage agreements. He admitted that payments were made as per para 8 of the Claim statement (Table). During further cross examination MW1 admitted that the coal fillers, who are appointed as coal cutters, will be drawing higher wages than the coal fillers. It is in normal course for any person who is appointed to higher category of the post from the lower category of the post, to draw higher pay than the one he was drawing in the lower post. Why and for what reason the pay being drawn by the workman in the lower post i.e., coal filler was not protected while fixing his pay in the higher post i.e., coal cutter is not explained anywhere by the respondent in the counter. It is being said that the NCWA- II is not applicable to the claim of the workman . If so, what are the guidelines which are applicable to him are not explained and revealed.

12. Coal wage agreement No.2 is dated 11.8.1979. The appointment of the workman as the coal cutter took place on 3.10.1980. Thus the said agreement is applicable to the workman. The basic pay being drawn by the employee in the pre-promoted post shall be considered and next higher stage in the promoted post is to be taken for fixing his basic pay, in normal course of procedure in fixation of pays. Same is provided for in the Ex.W1 circular, which is issued in connection with implementation of NCWA-II. In the given circumstances it is very much clear that the pay of the workman as coal cutter has not been properly fixed by the respondent company. Even at this stage the said defect can be remedied and rectified by re-fixing his salary.

13. One another aspect to be considered in this case is the claim of the workman that a junior employee is drawing more salary than that of the workman and this anomaly also is to be rectified. Evidently, one Sri B. Satyanarayana who is also working as Gr.B Mining Sirdar in the respondent company along with the workman is junior to the workman. It can be said so since in the very counter of the respondent the particulars of the services of both these persons are given (the same are reproduced in this order supra). As per the same the workman was appointed as casual worker on 29.9.1976 whereas Sri B. Satyanarayana was appointed on 23.3.1977. The workman was appointed as coal filler on 1.3.1977 whereas Sri B. Satyanarayana was appointed as coal filler on 16.11.1978. From coal filler workman was posted as coal cutter, Cat.V whereas Sri B. Satyanarayana was appointed as coal cutter on 8.3.1987. Mean while the said B. Satyanrayana has

worked as Timberman in Cat. IV. That means workman has been working the capacity of coal cutter Cat.V from 3.10.1980 whereas Sri B. Satyanarayna has come to that post only on 8.3.1987 and thereby said Sri B. Satyanarayna has become junior to the workman by more than 6 years in the post of coal cutter Cat.V. The workman has been promoted Shot Firer Gr.D on 1.2.1981 from the post of coal cutter Cat.V whereas Sri B. Satyanarayana has been promoted to that post on 1.5.1987 and thus, Sri B. Satyanarayana is junior to the workman by more than 6 years. Both these persons were posted as Shot Firer Gr.C on 1.10.1987. But, the pay of the workman is shown as Rs.1522 whereas Sri B. Satyanarayana is shown as Rs.1582. For this shortage in pay of the workman, the explanation being given by the respondent is that both these persons can not be compared with each other since Sri B. Satyanarayana has worked as Timberman Cat.IV before being promoted as coal cutter Cat.V. This explanation is not proper and acceptable. The workman has been senior to the said Sri B. Satyanarayana in Cat.V as well as Shot Firer Gr.D posts by about 6 years. In such case, how and why there will be such disparity between their respective salaries, making the pay of the workman much less than that of said Sri B. Satyanarayana is a puzzling question. It is certainly an anomaly. For rectification of such anomalies several circulars were issued while effecting pay revisions, providing for stepping up of the salary of the senior on par with the junior who is drawing more pay than that of him. Respondent ought to have taken that recourse immediately after Petitioner /workman has drawn the attention of the respondent to the anomaly cropped up in this case. But they failed to do so. Therefore, workman is entitled for the relief of stepping up of his pay on par with the payoff Sri B. Satyanarayana, Mining Sirdar GDK II Incline of the respondent company.

14. In the schedule of the reference it is mentioned that the workman has been promoted as shot firer in 1980. It must be a mistake. It is no body's case that the workman has been promoted as a shot firer during the year 1980. He has been promoted as coal cutter in the year 1980 and he became shot firer only on 1.2.1981.

15. In view of the fore gone discussion of the material on record it can safely be concluded that the claim of the Petitioner that the workman Sri D. Krishna Murthy is entitled for refixation/protection of pay on his promotion as coal cutter in 1980 and also for one increment and consequential benefits is legal and justified.

This point is answered accordingly.

16. **Point No. 2 :**

In view of the finding arrived at above, the workman is entitled for re-fixation of his pay to the post of coal cutter category 5 by protecting his pay in the post of coal filler and fixing his pay in the pay scale available at the relevant time for the post of coal cutter category 5 and following the procedure laid down for fixation of pay in NCWA-II.

17. Consequently he is also entitled for re-fixation of his pay in all the other promotional posts and also re-fixation of his increments in various posts he worked. He is also entitled for the arrears of pay consequent to the re-fixation of his pay.

18. While refixing the pay of the workman his pay shall be stepped up when his pay becomes lower than that of his junior B.Satyanarayana.

This point is answered accordingly.

19. **Result :**

In the result, petition is allowed. Respondent is directed to refix the Pay of the workman Sri D. Krishna Murthy in the post of coal cutter category V to which he was promoted from the post of coal filler with effect from 3.10.1980, by protecting the pay of Rs.22.35 ps per day, which he was earning as coal filler and following the guidelines given for fixation of pay in NCWA-II dt.11.8.1979; to refix the Pay of the said workman in all the other promotion posts and also to refix the increments granted to him and further to extend all the consequential benefits to him. While refixing the pay of the workman his pay shall be stepped up when his pay becomes lower to that of his junior Sri B. Satyanarayana.

20. After so refixing the Pay, the respondent shall pay the arrears of the salary becomes due to the workman Sri D. Krishna Murthy. All this exercise shall be completed within one month from the date of receipt of this award.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1 : Sri D. Krishna Murthy	MW1 : Sri P. Purushotham Rao

Documents marked for the Petitioner

Ex.W1 : Photostat copy of circular No. P.49/3696/3472 dt.17.9.79.

Ex.W2 : Photostat copy of circular No. P. 49/4117/676 dt. 18.4.84.

Ex.W3 : Photostat copy of National Coal Wage Agreement IV dt.28.12.1989.

Ex.W4 : Photostat copy of letter No. P.49/4764/IR/133 dt. 24.1.1990.

Documents marked for the Respondent

Ex.M1 : Photostat copy of Minutes of conciliation proceedings No.1/75/88-E3 dt.1.3.89.

Ex.M2: Photostat copy of lr.No.1/10/89-E3 dt.15.3.89.

Ex.M3: Photostat copy of lr.No.L-22012(82)/89-IR(C-II) dt.19/22.6.89.

Ex.M4: Photostat copy of affidavit filed in WP No10967/1991.

Ex.M5: Photostat copy of counter affidavit filed in WP No10967/1991.

Ex.M6: Photostat copy of order in WP No10967/1991.

Ex.M7: Photostat copy of circular No.P.49/3696/3472 dt.17.9.79.

Ex.M8: Photostat copy of circular No.P.49/3696/2104 dt. 15.6.1980.

Ex.M9: Photostat copy of Implementation instruction No.18, JBCCI guidelines.

Ex.M10: Photostat copy of Chapter-III in NCWA-I showing basics.

Ex.M11: Photostat copy of Chart showing basics in NCWA-II.

Ex.M12: Photostat copy of office order No.GDK.No.2 & 2A/Agt/87/525 dt.7.3.1987.

Ex.M13: Photostat copy of another office order dt.28.4.1987.

Ex.M14: Photostat copy of another office order dt. 7.10.1988.

Ex.M15: Photostat copy of another office order dt. 1.10.1980.

Ex.M16: Photostat copy of another office order dt. 4.2.1981.

नई दिल्ली, 23 जनवरी, 2014

का.आ. 569.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 217/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था ।

[सं. एल-22012/102/2001-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 23rd January, 2014

S.O. 569.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 217/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 23.01.2014.

[No. L-22012/102/2001-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 4th day of December, 2013

INDUSTRIAL DISPUTE No. 217/2002

Between :

The Secretary, (Sh. L. Prakash),
Singareni Collieries Workers Union(AITUC),
Godvarikhani-505209 ...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Limited,
Ramagundam-III Divn.,
Godavarikhani-505209 ...Respondent

Appearances:

For the Petitioner : Sri K. Vasudeva Reddy, Advocate

For the Respondent : Sri P.A.V.V.S. Sarma, Advocate

AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/102/2001-IR(CM-II) dated 4.3.2002 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Limited and their workmen. The term of reference is as under:

SCHEDULE

"Whether the action of the General Manager, M/s. Singareni Collieries Company Limited, Ramagundam Divn.III. Godavarikhani in denying to rectify the anomaly in basic fixation of the workers comparing with junior of the same and similar job under the single seniority list is legal and justified? If not, to what relief the workmen are entitled to?"

2. After receiving the reference and registering it as ID No.217/2002 this forum secured the presence of the General Manager, M/s. Singareni Collieries Company Limited, Ramagundam-III Division (Who will hereinafter be referred to be as Management and the Secretary, Singareni Collieries workers union, AITUC, Godavarikhani (Who will hereinafter be referred to be the Petitioner).

3. **Petitioner union representative has filed his claim statement with the averments in brief as** follows :

The service conditions of workmen working in the coal mines will be regulated by bilateral settlements called National Coal Wage Agreement (NCWA) entered into in

the JBCCI (Joint Bipartite Committee on Coal Industry) meetings. The period of the agreement would be four years. As per the settlement entered into, implementation instructions will be issued for the items agreed. The settlement and implementation instructions will be binding on the Management of coal mines as well as the workmen. Subsequent to arriving of NCWA-V implementation instruction No.18 was issued, whereunder it is stipulated that wherever anomalies arises the pay of the senior employee has to be stepped up with the level of pay of junior employee concerned from the date of such anomaly arisen i.e., from the date the junior employee started getting higher basic pay than the senior employee. The said instruction does not make any differentiation between the workmen of daily rated cadre to daily rated category or between the daily rated workmen promoted monthly rated or monthly rated employee promoted to higher monthly rated post. Whereas the workmen S/Sri B. Venkateshwarlu, A Ravinder Reddy, M. Srinivas and 34 others were all the members of the Petitioner union and who are seniors to Mr. B. Sarangam(EC No.1115921) used to get less pay than that of said Sri B. Sarangam subsequent to pay fixations made in pursuance of NCWA-IV pay scale and after his being promoted to C grade. Said Mr. B. Saranagam was initially appointed as operator Gr. D with effect from 8.3.89 whereas all the other workmen mentioned above were appointed prior to him. Said Sri B. Sarangam was given Gr. C with effect from 1.1.1991, whereas all the workmen were given Gr. C much prior to him. The basic pay of Sri B. Sarangam as on 30.6.91 was Rs. 50.59 ps (D-Grade), whereas the basic pay of the other workmen used to be Rs. 53.22ps, (Gr.C) the basic pay of Sri B. Sarangam 1.3.91(NCWA-V) used to be Rs.77.57ps whereas the basic pay of all other workmen used to be Rs.81.17 Ps but subsequently basic pay of Sri B. Sarangam was fixed as Rs. 85.02 ps with effect from 1.9.91 whereas the pay of all the other workmen remained as 81.17. this anomaly is being continued even as on today. And the said Sri B. Sarangam who is junior to all other workmen mentioned above, is being paid a basic pay of Rs. 257.54ps per day whereas the others are getting basic pay of Rs. 251.03 ps, despite being seniors to him. Several representations were made for redressal of the grievance but in vain. Respondent failed to settled the issue of anomaly inspite of representations and reminders. Petitioner approached Assistant Labour Commissioner (Central) by submitting representation dated 16.3.99 seeking for conciliation proceedings to settle the issue amicably. But the conciliation proceedings ended in failure. Thus, this reference is made. Despite accepting the contents of the implementation instruction No.18 Respondent refused to resolve the grievance on the ground that wage anomaly arose between the daily rated cadres but not daily rated employees promoted monthly rated employee promoted to higher monthly rated post. The contention of the Respondent was basing on the circular dated 4.10.96 issued by General Manager (Per) contending that wage anomalies cropped up in case of daily rated employeed promoted monthly rated, and monthly rated employee promoted to higher monthly rated posts then only be resolved, the stepping up of the pay of the employee on par with the junior but any wage anomaly arose between the daily rated employees can not be resolved in such manner by implementing Instruction No.18 which is not a correct contention. The Instruction No.18 does not differentiate or discriminate in such manner and can not refuse to fix the pay of the above mentioned workmen on par with their junior Sri B. Sarangam. Refusal on the part of the Respondent officials to fix the pay in such manner is contrary to the dicta laid down by Hon'ble Supreme Court of India. The wage anomaly is to be removed by applying implementation Instruction No.18 and concerned workmen are entitled for all other consequential benefits.

4. **Respondent filed the counter with the averments in brief as follows :**

Petition is not maintainable without making Sri B. Sarangam as a party to this proceeding. Sri B. Sarangam happened to get higher pay since he has been promoted to C-Grade after pay fixation. The Pay fixation took place on 1.7.91 and Sri B. Sarangam was promoted on 1.9.91 whereby he got a higher basic pay of Rs.85.02ps. Petitioner union is not disclosing the fact that Sri B. Sarangam was still in D Grade when his seniors were in C Grade and Sri B. Sarangam was drawing lesser salary than his seniors. The so called anomaly is not anomaly in law since the disparity arose due to Sri B. Sarangam getting promotion after pay fixation resulting into variations in basic pay. The NCWA is being scrupulously followed by the Management. If there are any doubts and need for clarification the Petitioner union ought to have approached standardisation committee under JBCCI which is dealing with the same. Petitioner union is contending that as anomalies between the daily rated persons promoted to monthly rated or between monthly rated to higher monthly rated are being corrected the same benefit will have to be given to daily rated categories. The said contention has no substance. Union has never expressed any grievance regarding interpretation of the rectification of the anomalies. It was clarified by letter dated 20.2.1984 addressed the Coal India Ltd., that anomalies within daily rated categories can not be rectified. But no grievance has been raised regarding the same since decades together. No dispute was raised since 1991 because there is no anomaly. Just because Sri B. Sarangam who was promoted to Gr.C much subsequent to other workmen started to earn higher pay than the pay of the others upon fixation after pay since he was promoted after new wage agreement, he will not be a senior to others. He continues to be junior to the other even as on today. Thus, the grievance is misconceived in law. There are no guidelines for rectification of anomalies in the basic pay in respect of

daily rated employees promoted to higher daily rated categories. The averment that implementation instruction No.18 does not make any difference between the workmen of any cadre or category is not correct. The workmen are not entitled for the relief of rectification of so called anomaly in pay. The difference in pay occurred only due to promotion effected to Sri B. Sarangam after pay revision. Whereas the other workmen got promoted prior to pay fixation. Petition is liable to be dismissed.

5. To substantiate the contentions of the Petitioner WW1 to WW3 were examined and Ex.W1 to W18 were marked. To substantiate the contentions of the Respondent MW1 was examined and Ex.M1 to M2 were marked.

6. Heard arguments of either party.

7. **The points for consideration are** :

I. "Whether the action of the General Manager, M/s. Singareni Collieries Company Limited, Ramagundam Divn.III. Godavarikhani in denying to rectify the anomaly in basic fixation of the workers comparing with junior of the same and similar job under the single seniority list is legal and justified?

II. To what relief the workmen are entitled to?"

8. **Point No. I** :

It is an admitted fact that several of the workmen whose list is annexed to the reference and who are 37 in number, are all seniors to another workman by name Sri B. Sarangam. It is also an understood fact that all these persons are in the same cadre and in the same seniority list but said Sri B. Sarangam is drawing more pay than that of these 37 workmen. This anomaly arose when the pay of Sri B. Sarangam was fixed in the promotion post i.e., as Operator Gr. C from the post of Operator Gr.D, with effect from 1.9.1991. By that time all the aggrieved workmen who are mentioned above, have been working in the cadre of operator Gr.C and thus they were are all seniors to said Sri B. Saranagam. But they all have been drawing Rs.81.17 Ps whereas Sri B. Sarangam has been fixed with Rs.85.2 ps with effect from 1.9.1991. Though he is junior to all the other workmen by 1.3.2000 said Sri B. Saranagam was being paid basic pay of Rs.257.54 ps whereas the others have been getting basic pay of Rs.251.03 ps despite being seniors to him. These are all admitted facts. Representations were evidently made for rectification of these anomalies but Respondent has not headed the said request, on the ground that there is no anomaly at all, since said Sri B. Saranagam as well as the other workmen all belong to daily rated categories and as per the clarification given regarding rectification of anomalies in respect of such categories by the Coal India Limited, the anomalies within daily rated categories can not be rectified. According to them such clarification has been given vide letter No.CIL/III JBCCI/MISC/178 dated 20.2.1984. Ex.M2 is the said letter. But there is neither any enforceable rule nor any legal provision which permits such discrimination. No reason at all is assigned for such discriminatory decision which is resulting into great prejudice to the affected workmen belonging to daily rated categories. Thus, such practice can not be allowed to be prevailed upon.

9. Further, Ex.W3 is the implementation instruction No. 18 dt.18.9.1996 which provides for rectification of the wage anomaly when it occurs in pay fixation resulting into a junior drawing more pay than that of his senior. The said document does not distinguish between the various categories of the employees, it merely speaks of the junior employees and senior employees. Therefore, the contention of the Respondent that the said instruction does not apply to the daily rated categories is not correct.

10. As per Ex.W3, when both the junior and senior employees belong to the same cadre and post are covered by the same seniority list and same cadre, and further the pre-revised and revised scale of pay of lower and higher posts in which they are entitled to draw pay are identical, the said instruction will apply. All these conditions are evidently complied with in this case. Another condition laid down is that the anomaly should be directly as a result of normal rules of fixation on such promotion in the revised scale of pay under NCWA-V. Regarding this also there is no dispute. In the given circumstances the wage anomaly cropped up in this case is certainly to be rectified.

11. One another contention being raised by the Respondent in support of their contention that the workmen are not entitled for the rectification of anomaly is belatedness in making the claim. No doubt, the anomaly has cropped up in this case with effect from 1.9. 1991. But the evidence on record discloses that the pay of Sri B. Saranagam and others was revised and fixed in the year 1995 but with retrospective effect from 1.7.1991. Since then the Petitioner union has been making representations for rectification of the wage anomaly cropped up, but in vain. Just because some time lapsed since the anomaly cropped up, the workmen can not be curtailed from raising industrial disputes, to cure the wage anomaly. There is no time limit prescribed either in the Industrial Disputes Act, 1947 or in any other relevant law, to raise industrial disputes in this regard. Further more, when the Petitioner union has been making efforts from the beginning to get the anomaly rectified by giving representations time and again, it can not be said that there is any lapse on their part. Thus, the claim of the Respondent that the workmen are not entitled for rectification of the wage anomaly since there is delay in raising the dispute, is not a sustainable contention.

12. In view of the fore gone discussion it can safely be held that the action of the General Manager, M/s. Singareni Collieries Company Limited, Ramagundam

Division III Godavarikhani in denying to rectify the anomaly in basic pay fixation of the workers whose names are annexed in the list enclosed to the reference, comparing with that of their junior of same and similar job under single seniority list, i.e., Sri B. Saranagam, is neither legal nor justified.

This point is answered accordingly.

13. **Point No. II** :

In view of the finding given in pint No.1 the wage anomaly cropped up in fixation of basic pay of the 37 workers whose names are mentioned in the list annexed to reference is to be get rectified, by directing the Respondent to step up their Pay on par with the pay of Sri B. Saranagam, their junior with effect from 1.9.1991 and also to grant all other consequential benefits including payment of arrears of the salary.

This point is answered accordingly.

Result :

14. In the result petition is allowed. Respondent shall fix pay of the 37 workmen whose names are mentioned in the list annexed to the reference on par with the pay of their junior Sri B. Saranagam w.e.f. 1.9.1991 and also shall grant all other consequential benefits including payment of arrears of salary which becomes due to them in consequence to the above mentioned fixation of pay and grant of consequential benefits. All this exercise shall be completed within one month from the date of receipt of this award.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1 : Sri Md. Jameeluddin	MW1: Sri P. Rama Krishna
WW2 : Sri Md. Sarvar	
WW3 : Sri M. Dayakar Reddy	

Documents marked for the Petitioner

Ex.W1 : Union subscription receipt.

Ex.W2 : Union subscription receipt.

Ex.W3 : Photostat copy of National Coal Wage Agreement-V.

Ex.W4 : Photostat copy of representation of workmen dt.31.12.1998.

Ex.W5 : Photostat copy of representation of workmen dt. 11.2.1999.

Ex.W6 : Photostat copy of representation of workmen dt. 16.3.99.

Ex.W7 : Photostat copy of another representation of workmen.

Ex.W8 : Photostat copy of calculation sheet.

Ex.W9 : Photostat copy of National Coal Wage Agreement-IV dt.1.11.1991.

Ex.W10 : Photostat copy of office order No.P.RG.III/5B/35 dt. 4.1.1995.

Ex.W11 : Photostat copy of office order No.P.RG.III/5C/1834 dt.3.8.1994.

Ex.W12 : Photostat copy of office order No.P.RG.III/5B/1835 dt.3.8.1994.

Ex.W13 : Photostat copy of office order No.P.RG(P)/5C/806 dt.3.7.90.

Ex.W14 : Photostat copy of office order No.P.RG.III/5B dt. 4.1.1995.

Ex.W15 : Photostat copy of office order No.POC/103/544 dt. 27.5.1990.

Ex.W16 : Photostat copy of office order No.P.RG(P)/5C/216 dt. 25.1.1990.

Ex.W17 : Photostat copy of office order No.P(PM)4/4193/A/Modifn./522 dt. 3.3.1997.

Ex.W18 : Photostat copy of office order No.P(PM)4/4193/3101 dt. 7.10.1988.

Documents marked for the Respondent

Ex.M1 : Office copy of lr. No.CIL/C-5/JBCCI/VI/224 dt.18/19.2.2004.

Ex.M2 : Office copy of lr. No.CIL/III JBCCI/Misc./178 dt.20.2.1984.

नई दिल्ली, 27 जनवरी, 2014

का.आ. 570.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडेंट, सेंट्रल स्टोर डिपार्टमेंट एंड वर्कशाप, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/ 36/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-01-2014 को प्राप्त हुआ था ।

[सं. एल-14012/27/2005-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 570.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/36/06) of the Cent. Govt. Indus. Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Commandant, Central Store Department and Workshop, Bhopal and their workmen, which was received by the Central Government on 24.01.2014.

[No. L-14012/27/2005-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/36/2006

Presiding Officer : SHRI R.B. PATLE

Shri Sanjay Puri,
S/o Shri Veer Bahadur Puri,
C/o Bharti Kirana Store,
Bhimnagar, Near Vallabh Bhawan,
Bhopal (MP) ...Workman

Versus

The Commandant,
Central Store Department & Workshop,
Bhabhanda Road,
Bhopal (MP) ...Management

AWARD

Passed on this 31st day of July, 2013

1. As per letter dated 31-7-2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-14012/27/2005-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Commandant, Central Storage Depot and Workshop, Bhopal in terminating the services of their workman Shri Sanjay Puri w.e.f. 4-12-2004 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Pages 5/1 to 5/4. The case of Ist party workman is that he was employed by IInd party following due process of law on daily wage basis from 13-10-93. Gate pass was issued to him showing date of entry in service. That he had continuously rendered services in institution of the IInd party with some temporary breaks. That his services were discontinued from 4-12-2004 without following provisions of Sections 25-F, G & H of I.D. Act. That he had completed 240 days continuous service during October-03 to December 04. That the action of IInd party amounts to illegal retrenchment. He was not issued notice under Sections 25-F of I.D. Act. He was not paid compensation in lieu of notice.

3. Workman alleged that IInd party was paying wages less than minimum wages. Workman had produced circular of State Bank showing wages at Collector rate. IInd party got annoyed by it and refused to make payment of wages to him for six months. As a view to punish him as he complained about the wages paid to him, termination of services is dehorse of provisions of I.D. Act, On such grounds, workman prays for reinstatement with full back wages.

4. IInd party filed Written Statement at Page 6 denying claim of the workman. The IInd party submits that workman was not employed as skilled workman. The workman is testing the fact to gain undue sympathy. It is submitted that workman is engaged at Central Storage Depot and Workshop (CSD&W) Sashastra Seema Bal (SSB), Bhopal as unskilled and casual labour on as and when required basis. The budget was allotted by Government. That SSB is a Border Guarding Force which comes under Govt. of India, Ministry of Home Affairs and CSD&W deals in Arms and Ammunition. It is a sensitive establishment. It is submitted that the establishment of IInd party is not covered as an Industry. The provisions of I.D. Act are not applicable to it. The casual labours are engaged by IInd party as per approval of Director of Finance dated 2-6-91. That IInd party is an armed force of Union of India placed in entry No. 2 of Schedule VII of the constitution of India. Provisions of I.D. Act are not applicable to it.

5. The unskilled casual labours were engaged by IInd party as and when required basis. There is no question of regularizing their services or paying compensation to them. The workman was paid arrears of wages as per directions of Assistant Labour Commissioner, Bhopal. IInd party prays for rejection of claim of workman.

6. Ist party filed rejoinder at pages 8/1to 8/2 reiterating its earlier contentions that the work performed by workman is of permanent nature. He is entitled to be absorbed in services of IInd party. IInd party is covered as an industry as per ratio held in Bangalore Water supply case. That activities of IInd party are (i) systematic activity, (ii) organized by co-operation between the employer and employee, (iii) for the production and/or distribution of goods and services . That services of workman are terminated in violation of Sections 25-F & H of I.D. Act.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the establishment of IInd party is covered as an Industry under Section 2(s) of I.D. Act?	In Affirmative
(ii)	Whether the action of the management of Commandant, Central Storage Depot and Workshop, Bhopal in terminating the services of their workman Shri Sanjay Puri w.e.f. 4-12-2004 is legal?	In Negative
(iii)	If so, to what relief the workman is entitled?	As per final order.

REASONS

8. IInd party in its written statement has denied that its establishment is covered as an Industry under Section 2(j) of I.D. Act. IInd party has pleaded that it is Armed Force of Union of India placed in entry No. 2 of Schedule VII of the constitution of India. Government of India issues instruction to it. Provisions of I.D. Act are not applicable. By rejoinder, Ist party submits that as per ratio held in Bangalore water supply and Sewerage Board versus A.Rajappa reported in AIR 1978 SC-548, CSD is covered as an Industry. To be precise affidavit of workman does not state anything about the activities undertaken in establishment of IInd party. The management's witness Shri H.S.Gaday in his affidavit of evidence in para-1 has narrated the activities taken by depot of IInd party-stocking and issuing of arms and ammunition and equipment etc., repairing of defective Arms in the workshop, procuring, stocking and issuing in bulk expendable stores required by SSB, procuring, stocking and issuing of tools and machinery, arranging disposal of salvage material. Said part of evidence of management's witness is not challenged in his cross-examination. At the time of argument, learned counsel for IInd party Shri Chourasia submits that as per Section 2(j)(6) of I.D. Act, establishment of IIind party is executed from provision of Section 2(j) of I.D. Act, amended clause (6) provides any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space are not excluded in the said section. Establishment of IInd party is controlled by Ministry of Home Affairs is not disputed.

9. Learned counsel for Ist party Mr. Pranay Choubey on the point relies on ratio held in

"Case of Bangalore Water Supply and Sewerage Board Versus R. Rajappa and Others reported in 1978-AIR-548. Their Lordship of the Apex Court dealing with scope of Section 2(j) of I.D. Act held Triple test to be applied whether the statutory body performing what is in essence regal functions by providing the basic amenities to the citizens is outside the scope of the definition."

Section 2(j) is amended in 1982 after judgment in Bangalore Water Supply and Sewerage Board Versus R. Rajappa and Others.

10. Learned counsel for Ist party workman also relies on ratio held in

> "Case of secretary to the Government of India, Ministry of Labour, New Delhi and another versus Shri Soundararajan and others reported in 1994-II LLN-217. His Lordship of Madras High Court dealing with scope of Section 2(j) of I.D. Act, definition is of very wide import and should be interpreted in a manner as not to whittle down but to advance object of Act. Ordnance Depot, Avadi, under Army Ordnance corp. Which is part of defence service is industry? Merely because it is a military department maintained under the exercise of regal sovereign functions of Central Government, the establishment doesnot cease to be an industry."

Their Lordship followed judgment in case of Bangalore Water Supply Case. The judgment in case of Union of India versus Central Govt. Industrial tribunal reported in 1986 L&S-1269.

11. Learned counsel for Ist party also relies on ratio held in

> "Case of Union of India versus Presiding Officer, Central Govt. equivalent citations 1995-1-LLJ-994-MP. His Lordship observed sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in a department discharging sovereign function, if there are units which are industries and they are substantially severable, then they should be considered to come within the fold of Section 2(j) of the Industrial Disputes Act. Their Lordship held I find myself in complete agreement with the opinion expressed by the Madras High Court in the case of Soundararajan and Others (supra) that the Central ordnance Depot being a severable unit of the Defence Department and is carrying on a systematic activity with the co-operation of employees and employer, it satisfies the triple test laid down by the Supreme Court in the case of Bangalore Water Supply and Sewerage Board (supra)."

12. Considering ratio held in above cases and the activities carried by the IInd party, I hold that the establishment of IInd party is covered as Industry under Section 2(j) of I.D. Act. For above reasons, I record my finding in Point No.1 in Affirmative.

13. Workman is claiming that he has completed 240 days continuous service. His services were terminated in violation of Section 25-F of I.D. Act. the parties are in serious dispute about completion of 240 days continuous service preceding 12 months of the termination of services. The management has produced document Exhibit M-1 i.e. copy of attendance register. On careful scrutiny of Exhibit M-1, it is found that workman Sanjay Puri was working for 252 days during preceding 12 months of termination of his services. IInd party has admittedly not issued notice, not paid notice pay, therefore termination of services of workman amounts to illegal retrenchment. That provisions of Section 25-F were not complied while terminating services of workman. Therefore I record my finding in Point No. 2 in Negative.

14. In view of my finding in Point No.2 that termination of services of workman is illegal, question

arises to what relief the workman is entitled? Whether he is entitled for reinstatement with back wages. Workman was working on daily wages, his name was not sponsored through Employment Exchange. He had not faced selection process. Workman was working in establishment of IInd party from 13-10-93 to 4-12-2004 for more than 10 years. However the workman is not in employment since more than 9 years. He was not working against sanctioned post. He was working on daily wages. Therefore his reinstatement with back wages would not be appropriate instead reasonable compensation would be proper. Considering circumstances of the case, in my considered view, considering the period of service on daily wages by the Ist party workman, compensation Rs.1,50,000 would be appropriate. Accordingly, I record my finding on Point No.3.

15. In the result, award is passed as under:-

(1) Action of the management of Commandant, Central Storage Depot and Workshop, Bhopal in terminating the services of their workman Shri Sanjay Puri w.e.f. 4-12-2004 is illegal.

(2) IInd party management is directed to pay compensation Rs.1,50,000 to workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 571.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भर्ती एयरटेल सर्विसेज लिमिटेड, नई दिल्ली एंड अलसातेलुसेंट नेटवर्क मैनेजमेंट सर्विसेज लिमिटेड, गुडगांव के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 115/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-40011/04/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 571.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 115/2012) of the Cental Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharti Airtel Services Limited, New Delhi and Alcatel-Lucent Network Management Services Limited, Gurgaon and their workman, which was received by the Central Government on 24.01.2014.

[No. L-40011/04/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. NO. 115/2012

Shri Naresh Kumar Itkan,
S/o Shri Chhotelal,
Senior Technician,
C/o All India General Mazdoor
Trade Union, 170, Bal Mukund
Khand Giri, Kalkaji,
New Delhi-110 010 ...Workman/Claimant

Versus

(1) M/s Bharti Airtel Services Limited
224, Okhla Industrial Estate, Phase III,
New Delhi-110 020

Also at

Plot No.16, Udyog Vihar,
Phase IV, Gurgaon,
Haryana-122 002 ...Management No.1

(2) M/s Alcatel-Lucent Network
Management Services Ltd.,
15th Floor, Tower C, DLF
Cyber Green DLF City,
Phase III, Gurgaon,
Haryana-122 002 ...Management No. 2

AWARD

A Senior Technician joined services with M/s. Bharti Airtel Services Ltd. (hereinafter referred to as management No.1) on 01.06.2006. He served management No.1 till 31.07.2009, the date when he tendered his resignation. His resignation was accepted by management No.1 on that very day and wages for the month of July 2009 as well as some amount towards full and final settlement was given to the Senior Technician. Thereafter, he joined services with M/s Alcatel Lucent Network Management Services Pvt. Ltd. (in short the management No. 2) on 01.08.2009. However, he raised a dispute before the Conciliation Officer claiming that his services were terminated by management No.1 in an illegal manner. Since his claim was contested, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication vide order No. L-40011/04/2012-IR(DU) New Delhi dated 21.09.2012 with following terms:

> "Whether action of the management of Bharti Airtel Services Ltd. in terminating services of the workman, Shri Naresh Kumar Itkan, S/o Shri Chhotelal, ex-Senior Technician with effect from 01.08.2009 is

legal and justified. If not, what relief the workman is entitled to?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, the Senior Technician, namely, Shri Naresh Kumar Itkan opted not to file his claim statement with the Tribunal.

3. Notice was sent to Shri Naresh Kumar Itkan by registered post on 16.10.2012, calling upon him to file claim statement before the Tribunal on or before 07.11.2012. This notice was sent to him through All India General Mazdoor Trade Union, 170, Bal Mukund Khand Giri, Kalkaji, New Delhi, the address provided by the appropriate Government in order of reference. Neither the postal article was received back nor it was observed by the Tribunal that postal services remained affected from 16.10.2012 till 07.11.2012. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to him by registered post on 12.11.2012 calling upon him to file claim statement before the Tribunal on 04.12.2012. Another notice was transmitted to the claimant by registered post on 06.12.2012 asking him to file his claim statement on or before 28.12.2012. Notice dated 18.01.2013 was again dispatched by registered post enabling the claimant to file his claim statement on or before 28.01.2013. Lastly, notice dated 30.01.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 25.02.2013. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf.

5. Order of reference projects a question as to whether action of M/s Bharti Airtel Services Ltd. in terminating services of Shri Naresh Kumar Itkan with effect from 01.08.2009 is legal and justified? Onus is thereon on management No.1 to project that its action of terminating services of Shri Naresh Kumar Itkan was legal and justified. Consequently, management No.1 was called upon to file its response to the reference order. In pursuance of the directions so issued, management No.1 filed its response to the reference order.

6. When response, so filed, is perused, it emerged that Shri Naresh Kumar Itkan joined services with management No.1 on 01.06.2006 as Senior Officer. His basic pay was Rs.5000.00, besides house rent allowance of Rs. 3720.00 and conveyance allowance of Rs. 3000.00 per month. His wages were paid by way of transmission to his bank account No. 00891050130439. Shri Naresh Kumar Itkan served management No.1 till July 2009. He tendered his resignation, which was accepted by management No.1 on 31.07.2009. His wages amounting to Rs.11120.00 were paid by way of transmission to his aforesaid bank account. Besides wages, a sum of Rs. 10662.00 was also paid to the claimant towards leave encashment. After getting his dues, claimant left servces of management No. 1. He joined management No. 2 on 1.08.2009. His basic salary, which he is getting from management No. 2, is Rs. 5938.00, besides house rent allowance of Rs. 3725.00, conveyance allowance of Rs. 800.00 and special allowance of Rs. 5351.00. Thus, he gets a sum of Rs. 15814.00 from management No. 2, which is higher than the wages which he was getting from management No.1. It is evident that Shri Naresh Kumar Itkan resigned the job of management No.1 in search of greener pastures. It is apparent that management No.1 has not taken any steps to terminate services of Shri Naresh Kumar Itkan.

7. As unfolded by management No.2, its name has been changed to M/s Telesonic Network Ltd. with effect from 25.02.2013. Certificate issued by Registrar of Companies has been placed before the Tribunal in that regard. Consequently, it is evident that the management No.2 took required steps to change its name, as referred above.

8. Nothing has been brought over the record by Shri Naresh Kumar Itkan to establish that his services were terminated by management No.1. On the other hand, management No.1 could demonstrate that Shri Naresh Kumar Itkan resigned the job for good. He joined services with management No. 2, where he was offered better emoluments. Consequently, it is concluded that management No.1 had not taken any action in terminating services of Shri Naresh Kumar Itkan. It was the employee who tendered his resignation and marched away. Under these circumstances, neither any illegality nor unjustifiability can be noted on the part of management No.1. Shri Naresh Kumar Itkan is not entitled to any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 25.03.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 572.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रशासनिक अधिकारी, रिजनल इन्स्टीट्यूट ऑफ एजुकेशन, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/9/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-14012/70/2007-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/9/2008) of the Cent. Govt. Indus. Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the industrial dispute between the employers in relation to the management of The Administrative Officer, Regional Institute of Education, Bhopal and their workman, which was received by the Central Government on 24.01.2014.

[No. L-14012/70/2007-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/9/2008

Presiding Officer : Shri R. B. PATLE

Shri Ashok Kumar Singh,
R/o 392/B, Ashoka Garden,
Bhopal (MP) ...Workman

Versus

The Administrative Officer,
Regional Institute of Education,
Shyamla Hills,
Bhopal (MP) ...Management

AWARD

Passed on this 29th day of July 2013

1. As per letter dated 17-1-2008 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-42012/70/2007-IR(DU). The dispute under reference relates to:

> " Whether the action of the management of Regional Institute of Education, Bhopal in terminating the services of their workman Shri Ashok Kumar Sharma w.e.f. 30-4-2006 is legal and justified? If not, to what relief the workman is entitled to?"

2. Ist party workman is challenging his termination w.e.f. 30-4-2006 from management in the dispute under reference . Even after issuing notices, neither the workman nor management appeared in the proceeding till date and no claim is filed on behalf of parties.

3. From conduct of the parties, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:-

" Reference is disposed off as No Dispute Award."

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 573.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रिंसिपल एंड ऑदर्स नवोदय विद्यालय समिति के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/313/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-42012/133/96-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 573.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/313/99) of the Cent. Govt. Indus. Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Prinipal and Ors., Navodaya Vidyalaya Samiti and their workmen, which was received by the Central Government on 24.01.2014.

[No. L-42012/133/96-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/313/99

Presiding Officer : Shri R. B. PATLE

Shri Ram Prakash Shakya,
S/o Shri Ram Sia Shakya,
Vill. PO Mcnhada Ghat,
Distt. Bhind ...Workman

Versus

Principal,
Navodaya Vidyalaya,
Birkhodi, Tehsil Raun,
Distt. Bhind (MP)

Director,
Navodaya Vidyalaya Simiti,
Regional Office,
E-3/3, Arora Colony,
Bhopal ...Management

AWARD

Passed on this 6th day of December, 2013

1. As per letter dated 14-10-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section -10 of I.D.Act, 1947 as per Notification No.L-42012/133/96-IR(DU). The dispute under reference relates to:

" Whether the action of the management of Navodaya Vidyalaya Samiti, Bhopal in terminating the services of Shri Ram Prakash Shakya w.e.f. 30-4-93 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/5. The case of Ist party workman is that he belongs to Scheduled Caste(Koli). He had passed his middle Exam. He was selected in Class IVth in Navodaya Vidyalaya Samiti at Birkhadi. He was posted on 6-9-88. Appointment order was given to him after break of 2-3 days. He was continued till April 1990. His services were terminated by Principal. He had submitted representation dated 18-6-90. Thereafter Ist party workman was continued on that post without any break till 30-4-93. His services were terminated orally w.e.f. 30-4-93. Section 25-F of I.D.Act was not followed. He was not given notice. He has not paid retrenchment compensation. The termination of his service is illegal. That Writ Petition No. 1108/93 filed by him was disposed as per order dated 14-12-95 for deciding his representation by IInd party No.1.

3. Workman submits that he had completed 240 days continuous service. His services are illegally terminated in violation of I.D.Act and Rules 77 mandatory provisions. On such ground, workman prays for reinstatement with consequential benefits.

4. IInd party filed Written Statement at Page 6/1 to 6/6. The claim of Ist party workman is totally denied. IInd party submits that workman was initially appointed as daily rated employee on temporary basis for 89 days in 1988. He has no right to claim reinstatement. IInd party further submits that the workman continued for sometime. His services were terminated as the workman was engaged as daily rated employee temporarily. That workman has not completed 240 days service. He is not entitled to protection under Section 25-F of I.D.Act. it is submitted that the workman was paid retrenchment compensation after disposing his representation. Workman is not entitled to reinstatement. It is denied that junior employees are continued. IInd party prays for rejection of the claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Navodaya Vidyalaya Samiti, Bhopal in terminating the services of Shri Ram Prakash Shakya w.e.f. 30-4-93 is legal and justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to reinstatement as prayed by him.

REASONS

6. Workman is challenging termination of his services for violation of Section 25-F of I.D.Act. that his services were orally terminated. He was not issued notice. Retrenchment Compensation was not paid . IInd party denied his material contentions. It is contended by IInd party that retrenchment compensation was paid to the workman.

7. Ist party workman filed affidavit of his evidence covering his contentions in Statement of claim that he had completed 240 days service. His services were terminated in violation of I.D.Act, Rules under I.D.Act. However the workman remained absent for his cross-examination. The evidence of workman was closed on 2-2-2006. Management was given opportunity to adduce evidence,. Management's evidence is closed on 26-8-2013. From above, it is clear that both parties did not properly participate in the reference proceeding. Workman failed to appear for cross-examination therefore his evidence cannot be relied. Management has failed to adduce evidence. The burden lies on workman to prove that he was working more than 240 days preceding termination of his services and violation of statutory provision. The burden is not discharged by workman therefore the action of IInd party management terminating the services of Ist party workman cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

(1) Action of the management of Navodaya Vidyalaya Samiti, Bhopal in terminating the services of Shri Ram Prakash Shakya w.e.f. 30-4-93 is proper.

(2) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 574.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिविजिनल इंजीनियर, टेलिकॉम प्रोजेक्ट, रायपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/208/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/13/98-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 574.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/208/98) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Divisional Engineer, Telecom Project, Raipur and their workman, which was received by the Central Government on 24.01.2014.

[No. L-40012/13/98-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/208/98

Presiding Officer : Shri R. B. PATLE

Shri Samaru,
S/o Shri Brahma,
Vill Ghatkachhar,
PO Sighora,Tehsil Saraipali,
Raipur ...Workman

Versus

Divisional Engineer,
Telecom Project,
7, Sahakari Marg-II,
Choubey Colony,
Raipur (MP) ...Management

AWARD

Passed on this 2nd day of December 2013

1. As per letter dated 10-9-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D.Act, 1947 as per Notification No. L-40012/13/98/IR(DU). The dispute under reference relates to:

> " Whether the action of the management of Divisional Engineer, Telecom Project, Raipur (MP) in terminating the services of Shri Samaru, S/o Shri Brahma Ex. Mazdoor is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman filed Statement of Claim at Page 3/1 to ¾. Case of workman is that he was appointed as Mazdoor against permanent post in 1986. Though he had worked more than 240 days in 86-87, his services were discontinued on 16-2-88. That he had raisied industrial dispute before ALC challenging termination. In conciliation proceeding, settlements arrived on 27-12-89 between parties and he was reinstated immediately without back wages. On 1-1-91, services of workman were discontinued without notice, retrenchment compensation was not paid to him. Termination of his services is in violation of Section 25-F of I.D. Act.

3. Ist party workman further submits that IInd party followed policy of hire and fire violating fundamental rights of the employees. Workman was not served with notice for termination of his services. That he had completed 240 days continuous service from 86 to 98,. That some junior employees filed petition No. 196/90 before CAT Jabalpur for regularization claiming that they have completed 240 days continuous service. Said petition was allowed by CAT, Jabalpur,. Workman also submits that he is entitled to reinstatement with back wages. On such ground, workman prays accordingly.

4. IInd party filed Written Statement at Page 7/1 to 7/2. The claim of workman is totally denied. It is submitted that workman was not appointed by management. Such post was not lying vacant. That workman was not engaged by DE, Telecom Project, Jabalpur but was engaged by DE Coaxial Cable Project Raipur which was wound up on 31-3-91. IInd party further submits that workman was appointed on muster roll on daily wages. The musters beyond 5 years are not reserved. Workman was engaged and discontinued as per exigencies. The dispute is referred after 12 years. Workman is not entitled to reinstatement. As he was engaged on temporary basis, workman was not appointed as per the order passed by CAT, Jabalpur. The order pertains to only who had approached said forum on all such contentions, IInd party prays for rejection of claim.

5. Workman filed rejoinder reiterating his contentions in Statement of Claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Divisional Engineer, Telecom Project, Raipur (MP) in terminating the services of Shri Samaru, S/o Shri Brahma Ex. Mazdoor is justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by workman rejected.

REASONS

7. Workman is challenging termination of his services for violation of Section 25-F of I.D.Act. That he was continuously working from 1986 to 1990. He had completed 240 days continuous service during each of

the year. IInd party denies all the material contentions of workman. Workman has filed affidavit of his evidence. However the workman remained absent and failed to make available for his cross-examination. his evidence was closed on 28-12-2010. Management also failed to adduce evidence. The evidence of workman cannot be relied as he has failed to make available for his cross-examination. Thus the claim of Ist party is not supported with any legal evidence. Therefore I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

(1) Action of the IInd party management terminating the services of Shri Samaru, S/o Shri Brahma Ex. Mazdoor is legal.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 575.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, ऑर्डनेन्स फैक्ट्री, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/161/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-14012/78/91-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/161/91) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The General Manager, Ordnance Factory, Jabalpur and their workman, which was received by the Central Government on 24.01.2014.

[No. L-14012/78/91-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/161/91

Presiding Officer : Shri R. B. PATLE

The President,
Ordnance Factory Workers Union.
Type-I, 57/2, Ordnance Factory,
Khamaria, Jabalpur

LRs-

Prabhawati Jhariya,
Pradeep Kumar Jhariya,
Sandeep Kumar,
Pinky Jhariya, Sweta Jhariya,
Sawitri Jhariya ...Workman/Union

Versus

General Manager,
Ordnance Factory,
Khamaria,
Jabalpur ...Management

AWARD

Passed on this12th day of December, 2013

1. As per letter dated Nil by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-14012/78/91-IR(DU). The dispute under reference relates to:

> " Whether the management of Ordnance Factory Khamaria, Jabalpur MP is justified in not promoting Shri Ravi Prakash Jharia, Fire Engine Driver Grade-I to the post of Supervisor-B(NTFB) w.e.f. 1987? If not, what relief he is entitled to and from what date?"

2. After receiving reference, notices were issued to the parties. Ist party Union submitted Statement of Claim at Page 3/1 to 3/2. Case of Ist party Union is that there were 4 post of supervisor Grade B(NTFB) the candidates from Reserved Category were not available for some time. Those post were filled by candidates belonging to General Category. That IInd party should have kept one post vacant for the personal belonging to SC/ST as and when candidate is available. Instead of it, IInd party fills all the post of General candidates. There is no justification in promoting persons from General Category to work against the post reserved for SC, ST. that workman Shri Ravi Prakash Jharia was entitled to be promoted to the post of supervisor B (MTMB) since 1987 when he becomes eligible. However the promotion was denied to him for arbitrary action by the IInd party. Therefore it is prayed that workman Ravi Prakash Jharia be promoted as supervisor Grade B (NTFB) from 1987.

3. IInd party filed Written Statement at Page 6/1 to 6/2. The claim of Union is denied. IInd party submits that against total sanctioned strength of post of supervisor (non-technical) for Ordnance Factory, Kaharia, 4 post of supervisor were allotted to Fire Brigade Section of the Factory. All those allocated post were filled since 1-4-95. That workman Ravi Prakash Jharia was appointed as Labour B Grade on 11-1-78. He was holding the post of fire engine driver Grade-I in Fire Brigade Section on 1-4-82. That Ravi Prakash Jharia belongs to SC. The

4 posts of supervisor non-technical allotted to Fire Brigade sections were held by persons senior to Ravi Prakash Jharia except one got promotion to Supervisor in non-technical post. As said post was for ST category, no other ST candidate was available at the relevant time. That promotion to fill over all vacancy of supervisor Grade B Non-technical is made following 40 point roster. The promotions were affected accordingly. That Ravi Jharia will get promotion to supervisor Grade B as and when becomes due as per the rules. IInd party submits that the workman is not entitled to promotion claimed by him.

4. IInd party submitted rejoinder at Page 7/1 to 7/2 reiterating its contentions in Written Statement.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	"Whether the management of Ordnance Factory Khamaria, Jabalpur MP is justified in not promoting Shri Ravi Prakash Jharia,. Fire Engine Driver Grade-I to the post of Supervisor-B (NTFB) w.e.f. 1987?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief prayed by him.

REASONS

6. Though the terms of reference related to the denial of promotion to Shri Ravi Prakash Jharia in the post of Supervisory Category B from 1987, the workman died during pendency. His LRs are brought on record. The affidavit of evidence of Ravi Prakash Jharia is filed. He claims to be only candidate belonging to SC. The vacancies were not carried forward to subsequent year and the backlog was filled up when C candidate become available, management in his case inspite of carrying forward vacancies reserved for SC, General candidate were appointed. He was deprived promotion. In his cross-examination, he says that since 1-4-82, he was working as Fire Engine Driver Grade-I. The post of Supervisor Grade B fell vacant in 1985. Those posts were filled in 1985. He was not qualified for promotion in 1985. The evidence of management's witness Ashish Bhattacharjee is on the point that in 1985, there was a common pool for Supervisor (NT) for all section in the Ordnance Factory. Out of which 4 posts were allocated in fire brigade section. Said post was to be filled following the rules laid down in SR Rules. That out of 4 posts, 3 posts were to be filled by General Category while 4 post are to be filled by ST candidate due to the non-availability of eligibility of eligible candidates, 4th post was also filled by General candidate. All the 4 post of Supervisor Grade B (NTFB) was occupied by persons who were senior to the workman except one vacancy for ST category. In his cross-examination, management's witness says that the post reserved for ST category was filled from General candidates as ST candidate was not available. Workman Ravi Prakash Jharia was promoted as supervisor Grade-B in 1993. He belong to ST category. That he had passed certificate of eligibility in 1987. No post of Supervisor Grade B was vacant from 1987 to 1994. That candidate of General Category was appointed on vacancy reserved for ST category. Workman does not belong to ST category, he belong to SC category. The evidence of management's witness that one post of ST category was vacant as per roster is not shattered in his cross-examination. In 1985, deceased workman was not holding eligibility certificate. He had passed certificate in 1987. Union has not adduced evidence about the roster for reservation of post and how management has violated the roster system. All the 4 candidates who were appointed in 1985 were not impleaded as parties. Therefore the action of the management cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

(1) The action of the management of Ordnance Factory Khamaria, Jabalpur MP is justified in not promoting Shri Ravi Prakash Jharia,. Fire Engine Driver Grade-I to the post of Supervisor-B(NTFB) w.e.f. 1987is legal.

(2) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 576.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडेंट, सेंट्रल स्टोर डिपार्टमेंट एंड वर्कशाप, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/35/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-14012/25/2005-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 576.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/35/2006) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Commandant, Central

Store Department and Workshop, Bhopal and their workman, which was received by the Central Government on 24.01.2014.

[No. L-14012/25/2005-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/35/2006

Presiding Officer : Shri R. B. PATLE

Shri Shivji Giri,
S/o Shri Ramnath Giri,
C/oBharti Kirana Store,
Bhimnagar, Near Vallabh Bhawan,
Bhopal (MP) ...Workman

Versus

The Commandant,
Central Store Department & Workshop,
Bhabhanda Road,
Bhopal (MP) ...Management

AWARD

Passed on this 31st day of July, 2013

1. As per letter dated 21-7-2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-14012/25/2005-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Commandant, Central Storage Depot and Workshop, Bhopal in terminating the services of their workman Shri Shivji Giri w.e.f. 7-1-2005 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 5/1 to 5/4. The case of Ist party workman is that he was employed by IInd party following due process of law on daily wage basis from December 96. Gate pass was issued to him showing date of entry in service. That he had continuously rendered services in institution of the IInd party with some temporary breaks. That his services were discontinued from 7-1-2005 without following provisions of Section 25-F, G & H of I.D.Act. That he had completed 240 days continuous service during December December 96 to 7-1-2005. That the action of IInd party amounts to illegal retrenchment. He was not issued notice under Section 25-F of I.D. Act. He was not paid compensation in lieu of notice.

3. Workman alleged that IInd party was paying wages less than minimum wages. Workman had produced circular of State Bank showing wages at Collector rate. IInd party got annoyed by it and refused to make payment of wages to him for six months. As a view to punish him as he complained about the wages paid to him, termination of services is dehorse of provisions of I.D.Act. On such grounds, workman prays for reinstatement with full back wages.

4. IInd party filed Written Statement at Page 6/1 to 6/4 denying claim of the workman. The IInd party submits that workman was not employed as skilled workman. The workman is testing the fact to gain undue sympathy. It is submitted that workman is engaged at Central Storage Depot and Workshop (CSD&W) Sashastra Seema Bal (SSB), Bhopal as unskilled and casual labour on as and when required basis. The budget was allotted by Government. That SSB is a Border Guarding Force which comes under Govt. of India, Ministry of Home Affairs and CSD&W deals in Arms and Ammunition. It is a sensitive establishment. It is submitted that the establishment of IInd party is not covered as an Industry. The provisions of I.D.Act are not applicable to it. The casual labours are engaged by IInd party as per approval of Director of Finance dated 2-6-91. That IInd party is an armed force of Union of India placed in entry No.2 of Schedule VII of the constitution of India. Provisions of I.D.Act are not applicable to it.

5. The unskilled casual labours were engaged by IInd party as and when required basis. There is no question of regularizing their services or paying compensation to them. The workman was paid arrears of wages as per directions of Assistant Labour Commissioner, Bhopal. IInd party prays for rejection of claim of workman.

6. Ist party filed rejoinder at page 8/1 to 8/2 reiterating its earlier contentions that the work performed by workman is of permanent nature. He is entitled to be absorbed in services of IInd party. IInd party is covered as an industry as per ratio held in Bangalore Water supply case. That activities of IInd party are (i) systematic activity, (ii) organized by cooperation between the employer and employee, (iii) for the production and/or distribution of goods and services . That services of workman are terminated in violation of Section 25-F & H of I.D.Act.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the establishment of IInd party is covered as an Industry under Section 2(s) of I.D.Act?	In Affirmative
(ii)	Whether the action of the management of Commandant, Central Storage Depot and	In Affirmative

Workshop, Bhopal in terminating the services of their workman Shri Shivji Giri w.e.f. 7-1-2005 is legal?

(iii) If so, to what relief the workman is entitled? Relief prayed by workman is rejected.

REASONS

8. IInd party in its written statement has denied that its establishment is covered as an Industry under Section 2(j) of I.D.act. IInd party has pleaded that it is Armed Force of Union of India placed in entry No.2 of Schedule VII of the constitution of India. Government of India issues instruction to it. Provisions of I.D. Act are not applicable. By rejoinder, Ist party submits that as per ratio held in Bangalore water supply and Sewerage Board versus A.Rajappa reported in AIR 1978 SC-548, CSD is covered as an Industry. To be precise affidavit of workman does not state anything about the activities undertaken in establishment of IInd party. The management's witness Shri H.S.Gaday in his affidavit of evidence in para-1 has narrated the activities taken by depot of IInd party-stocking and issuing of arms and ammunition and equipment etc., repairing of defective Arms in the workshop, procuring, stocking and issuing in bulk expendable stores required by SSB, procuring, stocking and issuing of tools and machinery, arranging disposal of salvage material. Said part of evidence of management's witness is not challenged in his cross-examination. Management's witness was unable to tell the working days of workman without going through the record. At the time of argument, learned counsel for IInd party Shri Chourasia submits that as per Section 2(j)(6) of I.D. Act, establishment of IInd party is executed from provision of Section 2(j) of I.D. Act, amended clause(6) provides any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space are not excluded in the said section. Establishment of IInd party is controlled by Ministry of Home Affairs is not disputed.

9. Learned counsel for Ist party Mr. Pranay Choubey on the point relies on ratio held in

> "Case of Bangalore Water Supply and Sewerage Board Versus R.Rajappa and others reported in 1978-AIR-548. Their Lordship of the Apex Court dealing with scope of Section 2(j) of I.D. Act held Triple test to be applied whether the statutory body performing what is in essence regal functions by providing the basic amenities to the citizens is outside the scope of the definition."

Section 2(j) is amended in 1982 after judgment in Bangalore Water Supply and Sewerage Board Versus R.Rajappa and Others.

10. Learned counsel for Ist party workman also relies on ratio held in —

> "Case of Secretary to the Government of India, Ministry of Labour, New Delhi and another versus Shri Soundararajan and others reported in 1994-II LLN-217. His Lordship of Madras High Court dealing with scope of Section 2(j) of I.D. Act, definition is of very wide import and should be interpreted in a manner as not to whittle down but to advance object of Act. Ordnance Depot, Avadi, under Army Ordnance corp. which is part of defence service is industry. Merely because it is a military department maintained under the exercise of regal sovereign functions of Central Government, the establishment does not cease to be an industry."

Their Lordship followed judgment in case of Bangalore Water Supply Case. The judgment in case of Union of India versus Central Govt. Industrial Tribunal reported in 1986 L&S-1269.

11. Learned counsel for Ist party also relies on ratio held in—

> "Case of Union of India versus Presiding Officer, Central Govt. equivalent citations 1995-1-LLJ-994-MP. His Lordship observed sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in a department discharging sovereign function, if there are units which are industries and they are substantially severable, then they should be considered to come within the fold of Section 2(j) of the Industrial Disputes Act. Their Lordship held I find myself in complete agreement with the opinion expressed by the Madras High Court in the case of Soundararajan and others (supra) that the Central Ordnance Depot being a severable unit of the Defence Department and is carrying on a systematic activity with the cooperation of employees and employer, it satisfies the triple test laid down by the Supreme Court in the case of Bangalore Water Supply and Sewerage Board (supra)."

12. Considering ratio held in above cases and the activities carried by the IInd party, I hold that the establishment of IInd party is covered as Industry under Section 2(j) of I.D. Act. For above reasons, I record my finding in Point No.1 in Affirmative.

13. Workman is claiming that he has completed 240 days continuous service. His services were terminated in violation of Section 25-F of I.D. Act. the parties are in serious dispute about completion of 240 days continuous service preceding 12 months of the termination of services. The management has produced document Exhibit M-1 i.e. copy of attendance register. On careful scrutiny of Exhibit

M-1, it is found that workman Shivji Giri was working for 194 days during preceding 12 months of termination of his services. Workman failed to establish that he has worked for more than 240 days. Provisions of Section 25-F cannot be invoked for his protection. As such I record my finding in Point No.2 that termination of workman is legal.

14. In view of my finding in Point No.2 that termination of services of workman is legal, the relief prayed by workman is rejected. Accordingly I record my finding on Point No.3.

15. In the result, award is passed as under:-

(1) Action of the management of Commandant, Central Storage Depot and Workshop, Bhopal in terminating the services of their workman Shri Shivji Giri w.e.f. 7-1-2005 is legal.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 577.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडेंट, सेंट्रल स्टोर डिपार्टमेंट एंड वर्कशाप, भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/34/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-14012/26/2005-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 577.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/34/2006) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Commandant, Central Store Department and Workshop, Bhopal and their workman, which was received by the Central Government on 24.01.2014.

[No. L-14012/26/2005-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/34/2006

Presiding Officer : Shri R. B. PATLE

Shri Shivmuni Bharti,
S/o Shri Nathuni Bharti,
R/o Jhuggi No.102/3,
Bharti Kirana Store,
Bhimnagar, Near Vallabh Bhawan,
Bhopal (MP) ...Workman

Versus

The Commandant,
Central Store Department & Workshop,
Bhabhanda Road,
Bhopal (MP) ...Management

AWARD

Passed on this 31st day of July 2013

1. As per letter dated 21-7-2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-14012/26/2005-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Commandant, Central Storage Depot and Workshop, Bhopal in terminating the services of their workman Shri Shivmuni Bharti w.e.f. 4-12-2004 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 6/1 to 6/4. The case of Ist party workman is that he was employed by IInd party following due process of law on daily wage basis from 13-10-93. Gate pass was issued to him showing date of entry in service. That he had continuously rendered services in institution of the IInd party with some temporary breaks. That his services were discontinued from 4-12-2004 without following provisions of Section 25-F, G & H of I.D. Act. That he had completed 240 days continuous service during October-03 to December 04. That the action of IInd party amounts to illegal retrenchment. He was not issued notice under Section 25-F of I.D. Act. He was not paid compensation in lieu of notice.

3. Workman alleged that IInd party was paying wages less than minimum wages. Workman had produced circular of State Bank showing wages at Collector rate. IInd party got annoyed by it and refused to make payment of wages to him for six months. As a view to punish him as he complained about the wages paid to him, termination of services is dehorse of provisions of I.D. Act, On such grounds, workman prays for reinstatement with full back wages.

4. IInd party filed Written Statement at Page 8 denying claim of the workman. The IInd party submits that workman was not employed as skilled workman. The workman is testing the fact to gain undue sympathy. It is

submitted that workman is engaged at Central Storage Depot and Workshop (CSD&W) Sashastra Seema Bal (SSB), Bhopal as unskilled and casual labour on as and when required basis. The budget was allotted by Government. That SSB is a Border Guarding Force which comes under Govt. of India, Ministry of Home Affairs and CSD&W deals in Arms and Ammunition. It is a sensitive establishment. It is submitted that the establishment of IInd party is not covered as an Industry. The provisions of I.D.Act are not applicable to it. The casual labours are engaged by IInd party as per approval of Director of Finance dated 2-6-91. That IInd party is an armed force of Union of India placed in entry No.2 of Schedule VII of the Constitution of India. Provisions of I.D.Act are not applicable to it.

5. The unskilled casual labours were engaged by IInd party as and when required basis. There is no question of regularizing their services or paying compensation to them. The workman was paid arrears of wages as per directions of Assistant Labour Commissioner, Bhopal. IInd party prays for rejection of claim of workman.

6. Ist party filed rejoinder at page 9/1to 9/2 reiterating its earlier contentions that the work performed by workman is of permanent nature. He is entitled to be absorbed in services of IInd party. IInd party is covered as an industry as per ratio held in Bangalore Water Supply case. That activities of IInd party are (i) systematic activity, (ii) organized by cooperation between the employer and employee, (iii) for the production and/or distribution of goods and services . That services of workman are terminated in violation of Section 25-F & H of I.D.Act.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the establishment of IInd party is covered as an Industry under Section 2(s) of I.D.Act?	In Affirmative
(ii)	Whether the action of the management of Commandant, Central Storage Depot and Workshop, Bhopal in terminating the services of their workman Shri Shivmuni Bharti w.e.f. 4-12-2004 is legal?	In Negative
(iii)	If so, to what relief the workman is entitled?	As per final order.

REASONS

8. IInd party in its written statement has denied that its establishment is covered as an Industry under Section 2(j) of I.D. Act. IInd party has pleaded that it is Armed Force of Union of India placed in entry No.2 of Schedule VII of the Constitution of India. Government of India issues instruction to it. Provisions of I.D.Act are not applicable.By rejoinder, Ist party submits that as per ratio held in Bangalore Water Supply and Sewerage Board versus A.Rajappa reported I AIR 1978 SC-548, CSD is covered as an Industry. To be precise affidavit of workman does not state anything about the activities undertaken in establishment of IInd party. The management's witness Shri H.S.Gaday in his affidavit of evidence in para-1 has narrated the activities taken by depot of IInd party-stocking and issuing of arms and ammunition and equipment etc., repairing of defective Arms in the workshop, procuring, stocking and issuing in bulk expendable stores required by SSB, procuring, stocking and issuing of tools and machinery, arranging disposal of salvage material. Said part of evidence of management's witness is not challenged in his cross-examination. At the time of argument, learned counsel for IInd party Shri Chourasia submits that as per Section 2(j)(6) of I.D.Act, establishment of IIind party is executed from provision of Section 2(j) of I.D.Act, amended clause(6) provides any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space are not excluded in the said section. Establishment of IInd party is controlled by Ministry of Home Affairs is not disputed.

9. Learned counsel for Ist party Mr. Pranay Choubey on the point relies on ratio held in—

> "Case of Bangalore Water Supply and Sewerage Board Versus R.Rajappa and Others reported in 1978-AIR-548. Their Lordship of the Apex Court dealing with scope of Section 2(j) of I.D.Act held Triple test to be applied whether the statutory body performing what is in essence regal functions by providing the basic amenities to the citizens is outside the scope of the definition."

Section 2(j) is amended in 1982 after judgment in Bangalore Water Supply and Sewerage Board Versus R.Rajappa and Others.

10. Learned counsel for Ist party workman also relies on ratio held in—

> "Case of secretary to the Government of India, Ministry of Labour, New Delhi and another versus Shri Soundararajan and others reported in 1994-II LLN-217. His Lordship of Madras High Court dealing with scope of Section 2(j) of I.D.Act, definition is of very wide import and should be interpreted in a manner as not to whittle down but to advance object of Act. Ordnance Depot, Avadi, under Army Ordnance corp. which is part of defence service is industry. Merely because it is a military department maintained under the exercise of regal sovereign

functions of Central Government, the establishment does not cease to be an industry."

Their Lordship followed judgment in case of Bangalore Water Supply Case. The judgment in case of Union of India versus Central Govt. Industrial Tribunal reported in 1986 L&S-1269.

11. Learned counsel for Ist party also relies on ratio held in—

"Case of Union of India versus Presiding Officer, Central Govt. equivalent citations 1995-1-LLJ-994-MP. His Lordship observed sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in a department discharging sovereign function, if there are units which are industries and they are substantially severable, then they should be considered to come within the fold of Section 2(j) of the Industrial Disputes Act. Their Lordship held I find myself in complete agreement with the opinion expressed by the Madras High Court in the case of Soundararajan and others (supra) that the Central ordnance Depot being a severable unit of the Defence Department and is carrying on a systematic activity with the cooperation of employees and employer, it satisfies the triple test laid down by the Supreme Court in the case of Bangalore Water Supply and Sewerage Board (supra)."

12. Considering ratio held in above cases and the activities carried by the IInd party, I hold that the establishment of IInd party is covered as Industry under Section 2(j) of I.D.Act. For above reasons, I record my finding in Point No.1 in Affirmative.

13. Workman is claiming that he has completed 240 days continuous service. His services were terminated in violation of Section 25-F of I.D.Act. the parties are in serious dispute about completion of 240 days continuous service preceding 12 months of the termination of services. The management has produced document Exhibit M-1 i.e. copy of attendance register. On careful scrutiny of Exhibit M-1, it is found that workman Shivmuni Bharti was working for 256 days during preceding 12 months of termination of his services. IInd party has admittedly not issued notice, not paid notice pay, therefore termination of services of workman amounts to illegal retrenchment. That provisions of Section 25-F were not complied while terminating services of workman. Therefore I record my finding in Point No. 2 in Negative.

14. In view of my finding in Point No.2 that termination of services of workman is illegal, question arises to what relief the workman is entitled? Whether he is entitled for reinstatement with back wages. Workman was working on daily wages, his name was not sponsored through Employment Exchange. He had not faced selection process. Workman was working in establishment of IInd party from 1993 to December 2004 for more than 10 years. However the workman is not in employment since more than 9 years. He was not working against sanctioned post. He was working on daily wages. Therefore his reinstatement with back wages would not be appropriate instead reasonable compensation would be proper. Considering circumstances of the case, in my considered view, considering the period of service on daily wages by the Ist party workman , compensation Rs.1,50,000 would be appropriate. Accordingly I record my finding on Point No.3.

15. In the result, award is passed as under:-

(1) Action of the management of Commandant, Central Storage Depot and Workshop, Bhopal in terminating the services of their workman Shri Shivmuni Bharti w.e.f. 4-12-2004 is illegal.

(2) IInd party management is directed to pay compensation Rs.1,50,000 to workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 578.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, टेलिकॉम फैक्ट्री, रिछाई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/100/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/25/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 578.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/100/2008) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Chief General Manager, Telecom Factory, Richai and their workman, which was received by the Central Government on 24.01.2014.

[No. L-40012/25/2008-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/100/08

Presiding Officer : Shri R. B. PATLE

Shri Ram Das,
Ex-Chowkidar,
R/o Temar Bhita Thana Cantt.
Jabalpur ...Workman

Versus

Chief General Manager,
Telecom Factory,
Richai, Jabalpur ...Management

AWARD

Passed on this 30th day of July, 2013

1. As per letter dated 29-7-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-40012/25/2008-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Chief General Manager, Telecom Factory, Richai Jabalpur in terminating the services of Shri Ram Das w.e.f. 25-1-1993 is legal and justified? If not to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at page 3/1 to 3/3. The case of Ist party workman is that he was employed by IInd party as watchman from 19-11-87 against permanent vacancy in Pay Scale Rs.750-12-870. That he was placed under suspension from 3-8-89. He was suspended w.e.f. 3-8-89. Charge sheet was served on him on 6-7-90. Two charges were alleged against him. (1) he unauthorisely entering Telecom Factory , Richai Jabalpur when he was not on duty and (2) that he had stolen zinc tiles from godown. Workman submitted reply to the charge sheet denying the charges. He has requested to stop enquiry since criminal case was pending against him for the similar charges. That Disciplinary Authority appointed Shri Ram Subhag Asstt. Engineer, Telecom Factory as Enquiry Officer and Shri T.R.K.Prasad Junior engineer, Telecom Factory, Richai, Jabalpur as Presenting Officer. It is further submitted by him that no finding was recorded about charge No.2 i.e. theft of zinc tiles. The Enquiry officer after conducting enquiry held that charge No.1 was proved. The report was submitted by Enquiry Officer. The Disciplinary Authority after receiving Enquiry Report, time was granted to the workman for submitting representation about proposed penalty of dismissal. Workman submitted his representation on 23-9-93. Considering charges against him, punishment of dismissal would be disproportionate. Disciplinary Authority did not consider his submissions. The order of dismissal passed on 25-1-93 exercising powers under Rule-12 of CCS Rules.

3. Workman further submits that in Criminal Case No. 1282/01, he was acquitted by Criminal Court of charge No. 457 of IPC on 30-11-03. That after his acquittal in criminal case, the workman submitted representations to the management of IInd party and reminder requesting for reinstatement but any order was not passed on his representations. The workman submits that order of dismissal passed by IInd party is legal. He prays for his reinstatement with back wages.

4. IInd party filed Written Statement opposing claim of Ist party workman. IInd party submits that workman was appointed as chowkidar on 18-11-87. While he was working as chowkidar, he was involved in misconduct. The workman was suspended vide order dated 4-8-89. Departmental Enquiry under Rule-14 of CCS Rules 1955 was initiated for unauthorisely entering Telecom Factory, Richai, Jabalpur and for committing theft of zinc tiles from godown on 3-8-89. That the Disciplinary Authority appointed Asstt. Engineer Richai as Enquiry officer and T.R.K. Prasad Junior engineer, Telecom Factory, Richai, Jabalpur as Presenting Officer. The enquiry was held during 8-3-91 to 22-4-92. The workman was given opportunity for his defence following principles of natural justice. Enquiry officer submitted his findings with respect to Article of charge No.1, charge No.2 was not enquired as it related to theft subject of criminal case. IInd party submits that for proving misconduct of scaling down the compound wall, after issuing showcause notice, punishment of dismissal was imposed. Punishment is legal considering gravity of misconduct. IInd party prays for rejection of claim of workman.

5. Workman filed rejoinder reiterating its earlier contentions and prayed for his reinstatement with back wages.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	"Whether the action of the management of Chief General Manager, Telecom Factory, Richai Jabalpur in terminating the services of Shri Ram Das w.e.f. 25-1-1993 is legal?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. Workman has not challenged legality of the enquiry conducted against him Punishment of dismissal is challenged by him. No enquiry was conducted in respect

of article of charge No.2 relating to theft of zinc tiles as criminal case was prosecuted against the workman. Workman was acquitted in Criminal Case. Copy of judgment is produced at Exhibit W-3. The reading of judgment in criminal case shows any of the material witnesses could not be examined as their presence was not secured. The witness examined before court, refused to identify the accused. Thus the material witnesses were not examined and accused workman was acquitted. The record of Enquiry Proceedings is not produced by IInd party. Documents Exhibit W-2 is the order issuing charge sheet and the charges alleged against the workman. The Enquiry officer recorded finding that charges were proved observing that on 13-4-92, in his statement Ramdas himself admitted that he jumped into the Factory by scaling compound wall which is a grave misconduct. The statement dated 13-2-92 in which the enquiry officer placed reliance is not produced on record.

8. Workman in his evidence on affidavit has stated that enquiry was conducted against him in respect of the charge, he entered Telecom Factory in unauthorized manner when he was not on duty. That he was acquitted in criminal case. The Departmental enquiry was held against him on same set of charges. In his cross-examination workman says that Criminal Case against him was in respect of the same charge. That his signatures were obtained by the officer but he was unable to tell his name. That he is working as labour for his survival.

9. The managements filed affidavit of evidence of Shri S.S.Paraste. the management's witness states that enquiry under CCS Rule 14 was initiated as per memorandum dated 6-7-90. The Article (1) was Ramdas unauthorisely entered the Telecom Factory, Richai, Jabalpur when he was not on duty. Thus committed misconduct in violation of Rule 3(1)(iii) of CCS Conduct Rule 1964. That said charge was proved in the enquiry. The Disciplinary Authority accepted findings of the Enquiry Officer. That on 13-4-92, the workman admitted that he had jumped into Factory. In his cross-examination, the witness of the management states that he was not Enquiry Officer or Presenting Officer. He was not working in the Factory where alleged incident occurred. That he was giving evidence as per record. He claims ignorance whether documents are produced on record or not. He was unable to tell whether the document was asked by the workman. The management's witness was unable to tell the names of witnesses in support of the charge sheet. It is surprised to say that the record of Enquiry proceedings is not produced by the management. Statement dated 13-2-92 is not produced on record. The findings of Enquiry Officer are not supported by any documents. The workman had submitted application for his reinstatement. Exhibit W-5 after his acquittal by criminal court. His request was not considered. From the evidence discussed above, it is established that the action of the management terminating service of workman Ramdas w.e.f. 25-1-93 is illegal. Accordingly I record my finding on Point No.1.

10. As to Point No.2, question arises to what relief the workman is entitled. The workman was working as watchman from 1987, his services were terminated from 25-1-93. The workman in his cross-examination says that for his survival, he is working as labour. Thus the workman is in gainful employment after termination of his services. He is acquitted in criminal case related to theft. Material witnesses were not examined in the criminal case. The record of DE conducted against workman is not produced. The alleged statement of workman dated 13-2-92 admitting the charge is not produced on record. Thus the Charge No.1 against workman is not supported by any evidence. The workman is terminated from service. Normally he would have been entitled to reinstatement but the age of workman is shown 70 years in his affidavit of evidence. Thus he has crossed the age of retirement. Therefore the relief of reinstatement cannot be granted. The workman was in gainful employment as per his evidence in cross-examination. Considering above aspects in my considered view, compensation of Rs.2 Lakh would be appropriate. Accordingly I hold and record my finding in Point No.2.

11. In the result, award is passed as under:-

(1) The action of management of Chief General Manager, Telecom Factory, Richai Jabalpur in terminating the services of Shri Ram Das w.e.f. 25-1-1993 is illegal.

(2) Management is directed to pay Rs.2 Lakh as compensation to the workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 579.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सब डिविजिनल ऑफिसर (फोन्स), कोरबा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/10/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/62/2006-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 579.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/10/07) of the Central Government Industrial Tribunal/

Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of The Sub Divisional Officer (Phones), BSNL, Korba and their workman, which was received by the Central Government on 24.01.2014.

[No. L-40012/62/2006-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/10/2007

Presiding Officer : Shri R. B. PATLE

Shri Sameer Singh Rajput,
S/o Shri Mahaveer Singh,
r/o Ring Road, Qtr.No.15,
Balconagar, Korba (CG) ...Workman

Versus

The Sub Divisional Officer (Phones),
BSNL, Balconagar,
PO Balconagar,
Korba (CG) ...Management

AWARD

Passed on this 30th day of July, 2013

1. As per letter dated 5-1-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/62/2006-IR(DU). The dispute under reference relates to:

> " Whether the action of the management of Bharat Sanchar Nigam Ltd. Bilaspur in terminating the services of their workmen Shri Sameer Singh Rajput w.e.f. 1-4-2005 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at page 3/1 to 3/2. Ist party submits that he was appointed as temporary employee in November 1995 by IInd party. At the time of his appointment, BSNL was not in existence. Deptt. of Telecommunication was in existence. His services were transferred to BSNL from 1-10-2000. BSNL came into existence, he had continuously worked in IInd party from November 1995 to 31-3-05. That he is covered as workman and IInd party is an industry under I.D.Act. He has completed 240 days service . He was not assigned duty from 1-4-2005. Refusal to take on duty amounts to termination of services. That his services are terminated in violation of Section 25-F, G & H of I.D.Act. Appointment order or termination order were not given to him. Action of IInd party is by way of victimization or unfair labour practice. That he was not in gainful employment. On such ground, he prays for his reinstatement with back wages.

3. IInd party filed Written Statement opposing claim of workman. IInd party submits that workman was casual labour working under contractor. Workman never worked under the Management of IInd party. That Sub Divisional Officer has no power to issue certificate about the working. The Certificate produced by workman is forged document. Workman is not entitled for reinstatement as his claim is based on forged document. On such ground, IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	"Whether the action of the management of Bharat Sanchar Nigam Ltd. Bilaspur in terminating the services of their workmen Shri Sameer Singh Rajput w.e.f. 1-4-2005 is legal?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Ist party workman challenges his termination from 1-4-2005. He has filed affidavit of his evidence covering most of his contentions that he was continuously working with IInd party from November 95 to 31-3-05. Initially he was working in Telecom Deptt. From 9-10-01, he was working with IInd party BSNL. Appointment order or order of termination were not given to him that he was working for 10 years with IInd party. His services are terminated without notice, retrenchment compensation was not paid to him. In his cross-examination workman says the post on which he was working was not advertised. If they were not sponsored through Employment Exchange, no written test was conduct, appointment letter was not given. Order of termination was not issued to him. That he was working as daily wage labour. His attendance was recorded. In his affidavit, it is written that he was working as casual labour. He denied that he was working under contract. He was paid wages under voucher obtaining signature by SDO. Workman had submitted application for production of documents. The documents attendance register and muster roll are not produced by management.

6. IInd party filed affidavit of witness Shri Birendra Singh. He is supporting the management's claim that workman was working under contractor through BSNL. He was unable to tell name of the contractor. No documents are produced on record to show that the workman was working under contractor. The contractor is to submit bills, names of labours were not mentioned in the bills. That the contractors are engaged in operational work and not for

office work. That several petty contractors were working in the department engaging 20 or more labours. That workman Sameer Singh was working with contractor engaging more than 20 labours. The management's witness was unable to tell under which contractor Sameer Singh was working. The attendance of the employees of BSNL is marked in the Attendance Register. The contractor maintains attendance register of its employees. Management also filed affidavit of evidence of witness Shri S.T.Khan. Said witness has stated that workman Sameer Singh was working in Contractor M/S. Shabir Brothers, Korba. The said witness was working as Supervisor . That workman had not completed 240 days service. The evidence of said witness remained unchallenged. The evidence of said witness appears afterthought as name of M/s. Shabir Brothers contractor is not stated by MW-I. The name of contractor is not disclosed in the Written Statement. 3rd witness Shri D.Patel tried to support the management that Sameer Singh was working under contractor for repair work. He had not completed 240 days. In his cross-examination , MW-3 says that he had no authority to execute contracts. His affidavit is silent under which contractor the workman was working. The management has produced zerox copy of agreement bearing date 26-12-2002, name of contractor is shown M/s. Sungrey construction. The evidence on record adduced by IInd party is not consistent, cogent and reliable to establish that workman was working under contractor. Therefore the evidence of workman deserves to be accepted. From the evidence discussed above, it is established that the workman was continuously working with IInd party management form November 1995 to March 2005, his services are terminated in violation of Section 25-F of I.D. Act. For above reasons, I record my finding in Point No.1 in Negative.

7. As to Point No.2, the question arises to what relief the workman is entitled. As per evidence on record, workman was continuously working for 10 years with the IInd party. Workman is out of employment from 1-4-05 for more than 8 years. His services are terminated without issuing notice or paying retrenchment compensation. His evidence that since 1-4-05, he is unemployed remained unchallenged in his cross-examination. Considering above aspects of evidence, workman is entitled to reinstatement with back wages. Accordingly I hold and record my finding in Point No.2.

8. In the result, award is passed as under:-

(1) Action of the management of Bharat Sanchar Nigam Ltd. Bilaspur in terminating the services of their workmen Shri Sameer Singh Rajput w.e.f. 1-4-2005 is illegal.

(2) IInd party is directed to reinstate workman with back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 580.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नुक्लेअर पॉवर कारपोरेशन लिमिटेड एंड ओठेर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/11 का 2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-42011/201/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 580.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/11 of 2012) of the Central Government Industrial Tribunal/ Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Nuclear Power Corporation Limited and Anr. and their workman, which was received by the Central Government on 24.01.2014.

[No. L-42011/201/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K.B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/11 of 2012

Employers in relation to the management of Nuclear Power Corporation Limited and Anr.

1. The Site Director
M/s. NPCIL, TMS (Distt. Thane)
Post Tapp, Via Boiser
Distt.Thane-401 504.

2. The Director (HR)
Nuclear Power Corporation of India Ltd.
12th floor, Vikram Sarabhai Bhavan
Central Avenue, Anushakti Bhavan
Mumbai-400 094.

AND

Their Workmen

Shri Avinash G. Petkar
Sahkar (DDR) Colony
Ganeshpur
Bhandara-441 904 (MS).

APPEARANCES :

For the Employers : Mr. V. H. Kantharia, Advocate.

For the Workman : Mr. A. P. Kulkarni, Advocate.

Mumbai, dated the 23rd December, 2013.

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No.L-42011/201/2011-IR (DU), dated 24.02.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of M/s. Nuclear Power Corporation of India Ltd., Tarapur, Maharashtra Site, Distt. Thane in imposing the punishment of 'dismissal from services' with immediate effect vide order No.TMS/TAPS 3 & 4/ HR/DC/092501 dated 29/06/2009-01/07/2009 is legal and justified and in proportion to the charges of misconduct? What relief the workman is entitled to?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workman filed his statement of claim at Ex-8. According to the second party workman, since January 2002, he is employee of the first party. He was serving as Tradesman-B when he was dismissed from service. According to him he was suspended on 20/11/2008 for the alleged misconduct. The alleged act does not amount to misconduct as the same has not taken place inside the premises of first party Corporation. The first party served him with charge sheet dt. 31/12/2008 alleging that, the workman had given threats to his co-worker Shri PankajKashyap and to Shri Sheikh Yunus A.R. The first party conducted inquiry against the second party workman only for one day i.e. on 18/03/2009. The second party workman has admitted the misconduct alleged against him as he was under mental stress, confused state of mind and due to several mental pressures and with a view to protect his employment. The admission by itself cannot take place as proof of allegations of misconduct. The first party was under legal obligation to conduct full-fledged inquiry against the employee. The second party has not given any unequivocal admission of guilt and it was necessary to examine the witnesses and to conduct regular full-fledged inquiry against the second party workman to record the findings of guilt against him. According to the workman the inquiry is based on mere admission and the same is not fair and proper. The findings of the Inquiry Officer are perverse. The Appellate Authority has dismissed his appeal. The said order is also not sustainable and the same is totally perverse. Therefore the workman has raised industrial dispute before ALC (C). As conciliation failed, on the report of ALC (C), the Labour Ministry, Govt. of India has sent the reference to this Tribunal. The workman herein prays that, the inquiry conducted against the second party be declared illegal and unfair and findings of the Inquiry Officer be declared perverse. The workman also prays that the punishment of dismissal from service be quashed and set aside and the management be directed to reinstate him with full back-wages in the cadre of Tradesman Grade-B. He also prays for compensation from the first party as an additional relief.

3. The first party resisted the statement of claim vide their written statement at Ex-9. According to them the workman has completed his training and appointed as Tradesman-B w.e.f. 24/01/2004. He was on probation for a period of one year. During the period of probation his conduct was not satisfactory. Consequently his period of probation was extended twice. As a member of O & M Crew of Tarapur Atomic Power Station, the workman was required to maintain high standard of discipline. However during his service workman committed serious acts of misconducts violating various norms of discipline and indulged himself in intemperate/ violent and riotous behaviour in the work place as well as in the residential township. He has remained unauthorisedly absent in many spells during 2004 to 2006. He was served with couple of memos for his absence from duty and for misbehaviour with superiors. As he repeated the misconducts, he was issued a charge-sheet dt. 23/5/2006 and disciplinary proceedings were initiated against him wherein he admitted the charges and was relieved with minor penalty. Again another charge-sheet was served on him on 15/03/2008 for assaulting an employee at his residence in the residential township and manhandled two other employees who tried to pacify him. During the said inquiry second party workman unconditionally accepted all charges levelled against him. Considering his apologies and assurance not to repeat the misconduct, though the charges were of serious nature, the disciplinary authority took a lenient and sympathetic view and imposed minor penalty of reducing his pay for a period of one year without cumulative effect.

4. On 14/11/2008 the second party abused a co-employee and assaulted him at the work place in the plant site. The co-employee suffered injuries on his head as well as other body parts. On 20/11/2008 second party workman was suspended. On 31/12/2008 departmental inquiry was initiated against him. During the inquiry proceedings the second party workman unconditionally accepted all the charges levelled against him. He was also given personal hearing by disciplinary authority. Considering the gravity and repetitive misconducts the disciplinary authority ordered second party's dismissal from service with immediate effect vide order dated 29/6/ 2009. The second party preferred appeal. Appellate Authority upheld the inquiry, findings and the penalty of dismissal imposed upon him. The contents in the statement of claim are false. The workman has given unconditional admission before the IO. Therefore IO held him guilty and

submitted his report. There is no illegality in the inquiry. The findings of the IO are based on facts. They are not perverse. The punishment is not shockingly disproportionate. Therefore the first party prays that the reference be dismissed with cost.

5. Following are the preliminary issues for my determination. I record my findings thereon for the reasons to follow:

Sr. no.	Issues	Findings
1.	Whether the inquiry held against the workman is fair and proper?	Yes.
2.	If yes, whether the findings of the Inquiry Officer are perverse?	No.

REASONS

Issue no.1:-

6. In this respect it is the case of the second party that there was no full-fledged inquiry against him and the Inquiry Officer conducted only one day inquiry and submitted his report merely on the basis of his admission. According to the Ld. Adv. of the second party law is well settled on the point that an admission itself cannot take place of proof of allegations of misconduct. In support of his argument the Ld. Adv. resorted to Madras High Court ruling in S.K. Raman V/s. The management of Kundah Rural Co-operative Agricultural Society Ltd. & Ors.1987 (I) LLJ 487. In that case the services of the employee were terminated on charge of misconduct as employee admitted the charge in the interview and gave a statement to that effect. In that case neither workman was served with charge sheet nor any inquiry was held against him. In the circumstances Hon'ble Court observed that;

> "Inquiry should be held even if employee admits the misconduct in interview and gives a statement of admitting the misconduct."

7. In the case at hand the facts are different. The employee herein was served with the charge sheet, Inquiry officer was appointed. He explained the charges to the workman. In response thereto the workman had admitted the charges of misconduct. In the case at hand the admission was not given during the course of inquiry or interview as in the above referred case. Therefore the ratio laid down in the above case is not attracted to the present case. The Ld. Adv. for the second party cited another Madras High Court ruling in Annamalai V/s. Regional Manager, Region-IV, State Bank of India &Ors., 1987(I), LLJ 174. In that case the employee therein had admitted the guilt therefore instead of holding inquiry the management dismissed the services on the ground of admission of guilt. In the circumstances, the Hon'ble High Court observed that;

> "Even assuming that the employee concerned admitted the guilt, there has been failure to hold inquiry as per the circular since the charges levied against him where termed as gross resulting in his dismissal."

8. In that case the Bank Board did not follow the instructions contend in circular. Furthermore the workman was dismissed without inquiry merely on the basis of his admission. However, in the case at hand the charge was framed against the employee. The inquiry officer was appointed. During the course of inquiry, the inquiry officer has explained the charge to the workman. He asked the workman whether he understood the charges levied against him. Workman admitted the same and he also admitted the charge of misconduct. Therefore, the inquiry officer held him guilty and submitted his report to the disciplinary authority. In this case it was submitted on behalf of the workman that the admission herein was given in the preliminary inquiry. The Ld. Adv. for the second party pointed out that the management witness Mr. P.K. Bansal in para 2 of his affidavit has contended that on 18.03.2009 at 11.00 hrs, preliminary inquiry was held. I perused the said affidavit at Ex.-16. In para 2, it is mentioned that on 18.03.09 at 11.00 hrs, a preliminary hearing was held at Civil Maintenance Office. In the same para, it further contended that the workman and the Presenting Officer, Shri A.N. Mohan Kumar, Dy. Manager (H.R.) was present on behalf of first party. The charges were read and explained by the inquiry officer to the second party. The Presenting Officer presented the case of the first party. He further says that during the hearing, workman accepted/admitted the charges against him. Therefore, no further proceeding took place and inquiry was closed. He has not stated that, it was preliminary inquiry it is contended that it was preliminary hearing. Meaning thereby it was beginning of the inquiry. When charge was framed and inquiry officer had explained the same to the workman and recorded his plea, it cannot be said that there was no inquiry as in the case cited herein above. Therefore, the ratio laid down in the above ruling is also not attracted to the set of facts of the case at hand.

9. The Ld. Adv. cited another ruling in Natwar Bhai S. Makwana V/s. Union Bank of India &Ors. 1985 (II) LLJ 296 wherein the Hon'ble Court on the point of admission observed that

> "…..admission by an employee alone is insufficient proof of misconduct as well as the facts constituting misconduct."

In that case main point therein was, the charge of misconduct was not specifically enumerated in the charge sheet. It was also not specifically enumerated whether the said misconduct was gross misconduct. In the circumstances, the Hon'ble Court has made the above observation. Thus the ratio therein is not applicable to the case at hand.

10. In this respect Ld. Adv. for the second party resorted to Rajasthan High Court ruling in State Bank of Bikaner & Ors. V/s. Jagdish Chandra Khadgawat 1987 LAB. I.C.112 wherein the Hon'ble Court held that, termination on the basis of admission of employee before investigating officer was violation of principle of natural justice. In that case the admission was during the course of preliminary inquiry or when the investigation was in progress whereas the admission in the case at hand was given before the inquiry officer and not to the investigating officer. Therefore, the ratio laid down in this ruling is also not applicable to the facts of the case at hand.

11. The Ld. Adv.for the second party on the point also cited Bombay High Court ruling in Cock Brand Sinnar Bidis Ltd., Nasik V/s. Shakuntla Bai Dashrath Khandare 1991 (II) CLR 722 wherein the services of illiterate workman was terminated on the basis of confessional statement. She had denied to have given any such confession. The appellate authority set aside the order of termination. The matter was taken in writ petition before Hon'ble High Court wherein Hon'ble High Court while confirming the order held that the appellate authority rightly emphasized the fact that the workman was illiterate and in a matter like this where documents could have been produced and proper evidence recorded in a domestic inquiry, the petitioner cannot short circuit the procedure by purporting to rely on the confessional statement of such an illiterate worker. In that case the workman was illiterate woman and she had denied to have given any such confessional statement. In the circumstances Hon'ble Court held that such confessional statement cannot be relied upon and it was not proper to terminate the services of an illiterate workman without any other evidence on record. In the case at hand neither the workman is an illiterate person nor he has denied to have given admission of guilt before the inquiry officer. Therefore, the ratio laid down in the above ruling is not applicable to the facts of the case at hand.

12. The Ld. Adv. for the second party in this respect cited the ruling of Delhi High Court in SudeshYadav V/s Oberoi Flight Services 2012 (133) FLR806. In that case the service of workman therein was terminated for misconduct of theft. It is alleged that when her bag was checked by Security Guard, she had already told him that there were chocolates insider her bag. On the basis of that the inquiry officer held her guilty and the management terminated her services. In this respect the Hon'ble High Court held that merely finding chocolates in her bag is not sufficient to prove the theft as the management failed to show that there were chocolates in their stock and they were stolen or there was shortage in the stock. In this case neither there was confession for having committed theft nor the workman has admitted the guilt. Therefore, the ratio laid down in this case is not attracted to the set of facts of this case.

13. The Ld. Adv. for the second party on the point of admission resorted to Apex Court ruling in Nirmala J. Jhala V/s State of Gujarat & Ors. 2013 (II) LLN 25 (SC). In that case the evidence recorded in preliminary inquiry was relied by inquiry officer. The Hon'ble Court held that the delinquent had no opportunity to cross-examine persons examined in the preliminary inquiry and thus, their evidence cannot be used in regular inquiry, same if used would amount to violation of principle of natural justice. In the case at hand as it is discussed herein above the admission of the workman was not recorded in preliminary inquiry. On the other hand it was recorded by the inquiry officer in the regular domestic inquiry. The facts of the cited case are altogether different. Therefore the ratio laid down in the above ruling is also not applicable to the set of the facts of the case at hand.

14. The Ld. Adv. in this respect cited another Bombay High Court ruling in M/s. Sahney Kirkwood Pvt. Ltd. V/s. B.G. Kondkar&Ors. 1985 (I) LLR 314. In that case the workman therein has accepted that what he had done might be only a mistake but not a crime, what he meant that it was not a mistake as to merit punishment. The Hon'ble Court held that the statement was in the nature of submission and did not amount to a confession of any guilt on his part. In that case there was no clear admission of guilt. Therefore, the ratio laid down in this ruling is also not helpful to the workman.

15. The Ld. Adv. on the point also cited one more Apex Court ruling in Jagdish Prasad Saxena V/s. The State of Madhya Bharat AIR 1961 SC 1070. In that case a Government servant was removed from service on the basis of statement made by him in inquiry held against other Government servant. The statement was not amounting to clear admission of guilt inspite of that he was removed from service. In the circumstances Hon'ble Court observed that;

> "It is of the utmost importance that in taking disciplinary action against a public servant a proper departmental enquiry must be held against him after supplying him with a charge sheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the charge-sheet."

16. In the case at hand not only the charge was supplied to the workman, contents therein were also explained to him. He also admitted before the inquiry officer that he under-stood the charges and admitted the guilt. Thus ratio in the above ruling is not attracted to the set of facts of the case at hand.

17. On the point the Ld. Adv. for the first party cited one more Apex Court ruling in Roop Singh Negi V/s Punjab National Bank and Others 2009(1) L.L.N. 806 wherein the Inquiry Officer has held the workman guilty on the basis of alleged confession of the workman given to the Police Officer. The Hon'ble Court held that employee's

confession should have been proved. Some evidence should be brought of record. In that case there was no direct and indirect evidence to prove the confession of the workman. In the circumstances, Hon'ble Apex Court set aside the punishment and reinstated the workman therein. The ratio laid down in the above ruling is also not attracted to the set of facts of the case at hand as the confessional statement or admission of guilt was made by the workman before the Inquiry Officer who explained the charges to the workman and workman admitted to have understood the same and admitted the charges. The workman has also not denied to have given admission before the inquiry officer. Therefore it requires no other evidence to prove his admission. In the circumstances this ruling also does not extend any help to the workman.

18. As against this the Ld. Adv. for the first party on the point of admission and evidential value thereof resorted to Apex Court ruling in Delhi Transport Corporation V/s. Shyamlal(2004) 8SCC 88 wherein in para 7 of the judgement the Hon'ble Apex Court on the point of evidential value of an admission observed that;

> "It is fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is however open to the person making the admission to show why the admission is not to be acted upon."

19. The Ld. Adv. also resorted to another recent Apex Court ruling in Manoj H. Mishra V/s. Union of India & Ors. (2013) 6 SCC 313. In that case in disciplinary proceedings appellant workman admitted to the charges levelled against him and thereupon dismissed for the misconduct for which he was charged. The Hon'ble Apex Court upheld the punishment of dismissal. The Ld. Adv. for the first party also resorted to another Apex Court ruling in Additional District Magistrate (City) Agra V/s. Prabhakar Chaturvedi and Anr. (1996) 2 SCC 12. In that case the workman therein was dismissed from services on his own admission in writing to the Inquiry Officer about his carelessness and fault. On the point of admission in para 4 of the judgment, the Hon'ble Apex Court observed that;

> "Infact on account of the clear admission contained in writing given by Respondent 1 on 14/12/1984, the charge against him stood proved on admission and the only question that remained to be considered was about the nature of punishment to be imposed on him."

20. The Ld. Adv. for the first party also resorted to Apex Court ruling in Central Bank of India Ltd. V/s. Karunamoy Banerjee AIR 1968 SC 266 wherein Hon'ble Court observed that;

> "If the workman admits his guilt, to insist upon the management to lead in evidence about the allegations will only be an empty formality."

21. The Ld. Adv. for the first party also resorted to another Apex Court ruling in Channabasappa Basappa Happali V/s. The State of Mysore 1971 (1) SCC 1 wherein on the point of evidential value of admission in departmental inquiry, the Hon'ble Court in para 4 of the judgement observed that;

> "……..…infact he admitted all the relevant facts on which the decision could be given against him and therefore it cannot be stated that the inquiry was in breach of any principles of natural justice."

22. In the light of above Apex Court rulings it is clear that allegations in departmental inquiry can be held proved on the basis of admission of facts or guilt. In such circumstances non-examination of further witnesses by the management to offer them for cross-examination would not amount to violation of principles of natural justice. In the circumstances I hold that the inquiry was fair and proper. Accordingly, I decide this issue no.1 in the affirmative.

Issue no.2 :

23. In respect of findings I would like to point out that the charges leveled against the workman were that, on 16/2/2008 the workman Shri Avinash G. Petkar visited Shri KailashTagade's residence and manhandled him at his residence and caused him injury. It was also alleged that during the incident he also caused damage to the household articles of Shri Tagade. It is also alleged that the behaviour of the workman was riotous at the residential area near Type 3, C-6 creating panic among the residents and workman used abusive, un-parliamentary language against Shri Dhananjay Doye and Paresh Naik who had tried to persuade him from such riotous act in the colony. Shri Tagade had lodged complaint about the incident against the workman. In the domestic inquiry the workman has admitted all the charges levelled against him and the Inquiry Officer held him guilty for all the charges. The findings of the IO are quite consistent as the charges were admitted by the workman. Therefore the findings cannot be called perverse. Accordingly I decide this issue no. 2 in the negative that findings of the IO are not perverse. In the light of findings of issue nos.1 & 2 I hold that inquiry is fair and proper and findings of IO are not perverse. I therefore call upon both the parties to argue/ lead evidence on the point of punishment. Thus the order:

ORDER

(i) The inquiry held against the workman Shri A. G. Petkar is fair and proper.

(ii) The findings of the Inquiry Officer are not perverse.

(iii) Issue notice to parties to argue/lead evidence on the point of punishment r/o 13/01/2014.

Date : 23rd December, 2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 581.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर, फार्म मशीनरी ट्रैनिंग एंड टेस्टिंग इंस्टिट्यूट, सिहोरे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/157/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-42012/54/96-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 581.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/157/97) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of The Director, Farm Machinery Training and Testing Institute, Sehore and their workman, which was received by the Central Government on 24.01.2014.

[No. L-42012/54/96-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/157/97

Presiding Officer : Shri R. B. PATLE

Smt. Aktari,
W/o Shri Jafer Khan,
Behind Railway Station,
Godi Mohalla, PO Budhni,
Distt. Sehore (MP) ...Workman

Versus

The Director,
Farm Machinery Training and
Testing Institute,
Tractor Nagar,
Budhni, Distt.Sehore ...Management

AWARD

Passed on this 18th day of March, 2013

1. As per letter dated 30-5-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D.Act, 1947 as per Notification No. L-42012/54/96-IR(DU). The dispute under reference relates to:

" Whether the action of the management of Central Farm Machinery Training and Test Institute, Budni in terminating the services of Smt. Aktari W/o Shri Jafer Khan is legal and justified? If not, to what relief the workman is entitled?"

2. After receipt of reference and notice to parties. Ist party submitted statement of claim at Page 8/1 to 8/2. The case of Ist party workman is that she was employed on daily wages as casual labour in the year 1987 by IInd party. She rendered continuous service till her termination in the year 1994. That she had completed 240 days working in each of the calendar year. That IInd party with ulerior motive adopted pick and choose policy. The services of 24 employees were regularized. Three of them namely Gulab, Sivlal, Narmada Prasad were regularized though they were above 70 years of age. Hiralal, Ashok Kumar and Suresh who were engaged after Ist party were also regularized. Services of Ist party were terminated without notice or paying retrenchment compensation. On above grounds, Ist party prays for her reinstatement with back wages.

3. Despite of notices send by different modes to IInd party including notice under Certificate of posting, IInd party failed to give appearance. IInd party was proceeded exparte on 15.6.2007.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the termination of services of Ist party/workman by IInd party management of Central Farm Machinery Training and Testing Institute, Budhni is just and legal?	In Nagative
(ii)	If not, what relief the workman is entitled to?"	Ist party is entitled to compensation Rs. 40,000 and other relief as per final order.

REASONS

5. Ist party workman is challenging termination of his services by IInd party. Ist Party filed affidavit of evidence at Page 10/1 to 10/2. Ist party in her affidavit has stated that she was working with IInd party from 1987 to 1994. She had completed 240 days continuous service during each of calendar year. That as per the scheme for regularization of temporary employees in 1993, her services were not regulaized, other junior persons were regularized. The persons who were overage such as Gulab, Sivlal, Narmada Prasad were also regularized. She prays for reinstatement with back wages.

6. The evidence of Ist party/workman remained unchallenged. IInd party is proceeded exparte, therefore, I find no reason to disbelieve her evidence. Ist party is out of employment since 1994. She was not served with notice, no retrenchment compensation was paid. Ist party is a rustic lady. Considering those facts, in my considered view instead of reinstatement, compensation Rs. 40,000 would be appropriate. In addition, Ist party is entitled to one month wages in lieu of notice and retrenchment compensation for 7 years service i.e. wages for 105 days. For above reasons, I record my finding on Point No. 1 in Negative and Point No. 2 accordingly.

7. In the result, award is passed as under:-

"1. Termination of services of Ist party Smt. Aktari by IInd party is illegal.

2. IInd party is directed to pay compensation Rs. 40,000 to Ist party, one month wages in lieu of notice and 105 days wages towards retrenchment compensation."

The above amount shall be calculated at the rate of last wage paid to the Ist party. Amount as per above order be paid within 30 days from the date of award. In case of default, the amount shall carry 9% interest from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 582.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, टेलिकॉम, पंजाब के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 69/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/516/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 582.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 69/2001) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Chief General Manager, Telecom, Punjab and their workman, which was received by the Central Government on 23.01.2014.

[No. L-40012/516/2000-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 69 of 2001

Reference No. L-40012/516/2000/IR(DU)

dated 31.01.2001

Avtar Singh S/o Lal Singh
R/o. Village Sohana,
Tehsil Mohali, Ropar ...Applicant

Versus

1. The Principal General Manager,
Telecom, Sector-18, Chandigarh ...Respondent

Appearances :

For the Workman : Shri P.K.Longia, Advocate

For the Management : Shri G. C. Babbar

AWARD

Passed on : 26-9-2013

Central Govt. vide notification No. L-40012/516/2000/IR(DU)dated 31.01.2001 has refered the following dispute to this Tribunal for adjudication**:**

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Avtar Singh S/o Lal Singh w.e.f. June, 1997 is just and legal? If not, to what relief the workman is entitled?"

2. The above noted reference was earlier answered vide award dated 6.10.2010. The management challenged the award in the Punjab & Haryana High Court through CWP No.8664 of 2011 and the Hon'ble High Court vide its order dated 23.5.2013 remanded the case for decision as afresh while passing the following order:

"Learned counsel would then submit that the three matters being connected and the issue of master-servant relationship involved in all the three cases deserves to be remanded to return proper findings by resolving the conflict of decisions. His alternative plea is that in case direct employment is not established the learned Tribunal ought to have then addressed itself to the question of relief of reinstatement at the hands of the contractor since the termination of the workmen was in contravention of Section 25-F of the Industrial Disputes Act, 1947.

On the other hand, Mr. Anil Rathee, learned counsel appearing for the management-BSNL has been unable to reconcile the two sets of awards on the

same subject matter on substantially the same evidence by the same Presiding Officer.

There can be no doubt that there is apparent conflict of decisions in the three cases, two on the one hand and one on the other with both parties feeling aggrieved by the judicial dispensation. In the circumstances, there is a broad consensus on both sides that the three impugned awards deserve to be set aside and the matter remanded for fresh consideration by clubbing the three matters to be heard afresh. It is also well possible for the learned Tribunal to re-examine the matters and record consistent findings without letting in any further evidence by the respective parties.

Resultantly, the impugned awards in the three cases are set aside. The matter is remanded to the learned Tribunal for fresh consideration untrammeled by anything said in this order which will not be taken as an expression on the merits of the claims set up by either side. The Presiding Officer, CGIT-cum-Labour Court-I, Chandigarh, is directed to decide the three cases afresh on the evidence already led after hearing both the parties. The Presiding Officer would endeavor to decide the cases by passing a fresh award/s within four months from the date when this order is placed before it. It would remain in the discretion of the Presiding officer to either deal with the cases separately or by clubbing them.

Ordered accordingly.

Petitions stand disposed of without any order as to costs."

3. Therefore, in pursuance of the order of the Hon'ble Punjab & Haryana High Court dated 23.5.2013 the reference in hand is being disposed off by separate award.

4. The Brief facts of the case according to the petitioner workman are that he was appointed as waterman on 01.04.1992 under the management and his work and conduct was satisfactory. Subsequently on 27.02.1999 his services were terminated without any notice and in violation of Section though 25F of the ID Act. He has already completed 240 days of services with the management. The workmen's further stated that he was shown to be appointed through a contractor which was sham transaction and the workmen was directly working and the work on he was engaged was of perennial nature. It is further submitted that after the termination of his services, the department has sanctioned 500 posts of regular majdoor for regularizing the services of the daily wagers who were engaged part time in Punjab Circle, vide order dated 20.04.2000 and order dated 10.09.2000. The work was still available that the management and his services were dispensed with illegally and no notice was given to him, the department terminated his services. No show cause notice or charge sheet was served upon the workmen, nor any enquiry was held and the management violated the mandatory provisions of Section 25H, F and T of the ID Act. The workmen demand that he may reinstated in services with full back wages.

5. Management filed written statement. The management alleged that department of Telecom now known as BSNL is not an Industry nor the claimants are workman. Claimant was not engaged nor recruited by the management nor any appointment letter was issued nor his services were terminated by the management nor the management paid to the workman. In fact the management entered into a contract with contractor for providing the labour for emergency work. The contractor supplied the labourer. The payment was directly made to the contractor. Management also pleaded that the workman was not appointed by the management. The question of termination of service without notice or without pay does not arise. It was also denied that the workman has completed 240 days with the department of the management. The department of Telecom has imposed a partial ban on 30.3.1985 for engagement of casual labourer for any type of work and a complete ban on 22.6.1988 and it was decided that there shall be no recruitment for casual labourer even for specific jobs. After the issue of notice dated 22.6.1988, a need was felt for amending Para 193 of P&T Manual, which permits engagement of casual labourer directly or through contractor. In lieu of the ban imposed by the DOP Letter dated 30.3.1985 and 22.6.1988, the case of workmen for engagement as workmen cannot be considered. The management also mentioned in written statement that department of Telecom has sanctioned 500 posts of Group D. Workmen and other similarly persons approached the Hon'ble Central Administrative Tribunal Bench by filling OA No. 980/PB/2000. Hon'ble Tribunal vide order dated 24.1.2001 directing the respondent passed the following order :

"On consideration of the matter and after pursuing the record of the case, we find that respondents are required to consider the applicants for the purposes of regular mazdoors, keeping in view of the decision rendered by the Apex Court in Excise Superintendent Malkapatnam Krishna District, AP Vs. K.B.N Visheshwara Rao and others, alongwith other candidates sponsored by the Employment Exchange. Once the cases of the applicants are liable to be considered for The post of regular Mazdoor as per the written statement, the relief claimed by the applicants in the present O.A. stands granted to them as they had prayed their cases for regular appointment be ordered to be considered.

In that view of the matter, this O.A. is disposed of as anfractuous. Interim order dated 27.11.2000 stands vacated."

6. Management also pleaded that the workman might have been engaged by the contractor and the management cannot be fastened with any liability of the contractor. The claims were not recruited according to the recruitment rules by the management. Management also pleaded in its written statement that no seniority list was maintained in respect of the labourer supplied by the contractor. The question of retaining juniors to the workman does not arise. In fact keeping contract labour has been dispensed with and the contractor was not further renewed. There is no violation of Section 25 F and 25 C of the I.D. Act 1947. It was also pleased that no new appointment has been made after the abolition of the system of engaging casual labour directly or through contractor which has been dispensed with on 12.2.1999 as per Govt. policy. The management also pleaded that the contractor is a necessary party, but the claimant has intentionally not impleaded him in the present case.

7. The workmen filed rejoinder reiterating the claim made in the claim statement.

8. In evidence workman filed his affidavit. He was cross-examined by the learned counsel for the management. The workman in his cross-examination clearly deposed that he has no document in his possession to show his appointment made by any officer of the department. He further stated that he has no certificate or any other document to show his employment from 1.4.1992 to 27.2.1999 with the management. He has also stated that he has not brought any document to show his performance of duty as mentioned in para 3 of his affidavit. He has no document in his possession to show that the wages were paid to him directly by any officer. He has no duty chart to support his averments made in para 5 of his affidavit. No termination letter was given. He has no seniority list of labourer engaged, so he can not tell who the junior was and who was the senior in their employment.

9. The management in evidence filed affidavit of MW1 Vinod Kumar Commercial Officer who tendered his affidavit Ex.M1 and also relied on documents Ex.M2 to M7. He also stated in cross-examination that original documents Ex.M3 to M& are not traceable in the office. It is admitted by the witness that department had not maintained any attendance register for marking the attendance of the workman and he has no record for payment of wages to the workman.

10. I have heard the learned counsel for the parties gone through the evidence as recorded in this case and has also gone through the different cases laws relied upon and filed by the counsel for the parties.

11. The learned counsel for the workman relied upon JT 2010(1) SC 598, Harjinder Singh versus Punjab State Warehousing Corporation, JT 2010(I) SC 618 State of U.P. and other Versus Saroj Kumar Singh, JT 2010(2) Supreme Court 599 Krishan Singh Versus Executive Engineer, 2010(3) SLR page 663 Anoop Sharma Versus Executive Engineer, 2010(3) SLR 673 General Manager Allahabad Bank Versus Shib Shankar Mukherjee, 2011 Lab. I.C. 2799 Devinder Singh Versus Municipal Council Sanaur., 2011 Lab I.C. 2807 Smt.Shipra Jindal Versus Union of India & ors., 1981(2) Service Law Reporter 11 Mohan Lal Versus Bharat Electronics Ltd., AIR1981 Supreme Court 422 Surender Kumar Verma Versus Central Govt. Industrial Tribunal-cum-labour Court Delhi and another, AIR 2001 Supreme Court 3527 Steel Authority of India Ltd. Versus National Union Water front workers.

12. The learned counsel for the management relied upon 1978(4) Supreme Court cases 257, Hussain Bai Versus Alath factory and others, AIR 1999 Supreme Court 1160 Haryana Electricity Board Versus Suresh Kumar and AIR 1995 Supreme Court 1893(1) Gujarat Electricity Versus Hind Majdoor Sabha and others, and on the judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnatka and others Vs. Uma Devi and others. The management also relied upon a judgment of Hon'ble High Court of Delhi dated 20.3.2013 in WP(C) 3150/2007 BSNL Vs. Attar Singh and others, AIR 2004 Supreme Court 969 Ram Singh and others Versus U.T Chandigarh, and a judgment of Hon'ble Supreme Court in Civil Appeal No 292 of 2009 Bharat Sanchar Nigam Limited, Jammu Vs. Teja Singh.

13. Both the parties have been heard.

14. As per reference, the short questions for adjudication were referred, whether the action of the management in terminating the services of the workman is just and legal? The management clearly stated that the workman was not their employee. Workman was supplied by the contractor as per agreement. Photocopy of the agreement have been filed. Workman's counsel argued that no original agreement or contract has been filed despite the repeated orders of the Tribunal as the agreement is a sham document. Counsel for the management rebutted the arguments advanced by the counsel for the workmen and submitted that agreement or contract can be effective even without any writing or document. Even an oral agreement between the parties can take effect. The learned counsel for the workman pointed out to the photocopies of the attendance sheets and argued that the workman marked his attendance with the management and no contractor was involved. The management in this regard submitted that the copies of the attendance sheets though not admitted by the management running from May 1995 to 1996, whereas the photocopies of the agreements are dated 22.8.1994 and 27.2.1998 has been filed and relied upon by the management. These agreements clearly mentioned for the supply of the labourer by the contractor. In this regard the learned counsel for the management referred to the statement made by the workman in his cross-examination in which he stated that he has no document in his

possession to show his appointment made by any officer of the department. He further stated that he has no certificate or any other document to show his employment from 1.4.1992 to 27.2.1999 with the management. He has also stated that he has not brought any document to show his performance of duty as mentioned in para 3 of his affidavit. He has no document in his possession to show that the wages were paid to him directly by any officer. He has no duty chart to support his averments made in para 5 of his affidavit. No termination letter was given. He has no seniority list of laborers engaged, so he can not tell who the junior was and who was the senior in their employment. From the above statement of the workman, it is clear that there is no relationship of employer and employee between the workman and the management as the burden to prove this relationship is purely on the workman and this burden can not be shifted on the management and the workman certainly failed to prove this relationship.

15. I have gone through the case laws cited by the workman. These case laws are not applicable to the facts and circumstances of the case in hand as the same are quite different from the facts and circumstances of the case in hand.

16. In the light of the statement of the workman, it is clear that the workmen fails to established that they were the employees of the management i.e. Telecom department. In the case of Ram Singh and others Vs. Union Territory Chandigarh and others, Dharam Pal and Others Vs. Union Territory, Chandigarh and others, and Amar Kumar and others Vs. UT, Chandigarh and others (AIR 2007 S.C.969), Hon'ble Apex Court observed that the regularization of the service of the contract labour- prayer for- relationship of employer and employees is question of fact has to be raised and proved before industrial adjudicator no relief can be granted before such adjudication. Hon'ble Apex Court dismissed the appeal. In BSNL Vs. Attar Singh (Supra) Hon'ble High Court of Delhi has observed that in respect of workmen who are found not entitled to wages under Section 17-B of the Act, no compensation is payable as they, an any event are not workmen of the petitioner and, consequently no case of retrenchment is made out by them against the petitioner. In Bharat Sanchar Nigam Limited Jammu Vs. Teja Singh (Supra), The Hon'ble Apex Court allowed the civil appeal moved by Bharat Sanchar Nigam Ltd. Jammu.

17. As stated above, the workmen failed to establish the relationship of employee and employer, therefore, the workman is not entitled to reinstatement in service as claimed by him.

18. Therefore, in view of the above discussion, the reference is answered against the workman as he is not entitled to any relief. The reference is answered accordingly. Central Govt. Be informed. A soft copy as well as hard copy be sent to the Central Govt. for publication of the award.

Chandigarh
26-09-2013

S. P. SINGH, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 583.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मेनेजर, टेलिकॉम, पंजाब के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 223/2001, 135/2001, 332/2000, 311/2000, 323/2001, 401/2000, 157/2001, 296/2000, 72/2001, 205/2001, 227/2001, 274/2000, 305/2000, 63/2003, 53/2004, 68/2001, 66/2003, 64/2003, 69/2003, 321/2001, 272/2000, 327/2001, 304/2000, 312/2000, 22/2001, 399/2000, 124/2001, 62/2003, 335/2000, 140/2001, 204/2001, 317/2000, 427 का 2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/44/2001-आईआर (डीयू),
सं. एल-40012/14, 242, 244-245/2001-आईआर (डीयू),
सं. एल-40012/334/2001-आईआर (डीयू),
सं. एल-40012/03, 12, 30/2001-आईआर (डीयू),
सं. एल-40012/263, 200, 334, 168, 519, 161, 193, 515, 157, 192, 199, 391, 311, 556, 268, 581, 292, 372-आईआर (डीयू),
सं. एल-40012/208, 221, 207, 227, 199-आईआर (डीयू),
सं. एल-40012/121/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 583.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 223/2001, I.D. No. 135/2001, I.D. No. 332/2000, I.D. No. 311/2000, I.D. No. 323/2001, I.D. No. 401/2000, I.D. No. 157/2001, I.D. No. 296/2000, I.D. No. 72/2001, I.D. No. 205/2001, I.D. No. 227/2001, I.D. No. 274/2000, I.D. No. 305/2000, I.D. No. 63/2003, I.D. No. 53/2004, I.D. No. 68/2001, I.D. No. 66/2003, I.D. No. 64/2003, I.D. No. 69/2003, I.D. No. 321/2001, I.D. No. 272/2000, I.D. No. 327/2001, I.D. No. 304/2000, I.D. No. 312/2000, I.D. No. 22/2001, I.D. No. 399/2000, I.D. No. 124/2001, I.D. No. 62/2003, I.D. No. 335/2000, I.D. No. 140/2001, I.D. No. 204/2001, I.D. No. 317/2000, I.D. No. 427 of 2000) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure in the industrial dispute between the employers in relation to the management of The Chief

General Manager, Telecom, Punjab and their workman, which was received by the Central Government on 23.01.2014.

[No. L-40012/44/2001-IR(DU),

No. L-40012/14, 242, 244-245/2001-IR(DU),

No. L-40012/334/2001-IR(DU),

No. L-40012/03, 12, 30/2001-IR(DU),

No. L-40012/263, 200, 334, 168, 519, 161, 193, 515, 157, 192, 199, 391, 311, 556, 268, 581, 292, 372-IR(DU),

No. L-40012/208, 221, 207, 227, 199-IR(DU),

No. L-40012/121/2003-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Details of Industrial Disputes to be answered :

(1) Case No. ID 223 of 2001

Reference No. L-40012/44/2001/IR(DU)

dated 15.5.2001

Aswani Kumar son of Sh. Dulo Ram,
resident of House No. 133,
Village Atawa, P.O. Badheri,
UT, Chandigarh ...Applicant

Versus

1. The Chief General Manager,
   Telecom, Punjab Circle, Sector-34,
   Chandigarh
2. The Principal General Manager,
   Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Aswani Kumar son of Dulo Ram w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled?"

(2) Case No. ID 135 of 2001

Reference No. L-40012/587/2000/IR(DU)

dated 26.3.2001

Balwant Singh son of Sh. Hazoora Singh,
resident of V.P.O. Mauli Baidwan,
District Mohali ...Applicant

Versus

1. The Chief General Manager,
   Telecom, Punjab Circle, Sector-34,
   Chandigarh
2. The Principal General Manager,
   Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference:

"Whether the action of Chief General Manager, Telecom, Punjab Circle, Chandigarh Distt. In ordering disengagement/termination of services of Sh. Balwant Singh a workman engaged through contractor M/s. Gupta w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled and from which date?"

(3) Case No. ID 332 of 2000

Reference No. L-40012/263/2000/IR(DU)

dated 29.8.2000

Bhikhari Ram S/o Sh. Dev Sharan Ram,
resident of House No. 233,
Ramdarbar Colony, Phase-II
Chandigarh ...Applicant

Versus

1. The General Manager,
   Telecom, Sector-18,
   Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of General Manager, Telecom, Chandigarh in terminating the services of Sh. Bhikhari Ram S/o Sh. Dev Sharan Ram is just and legal? If not, to what relief the workman is entitled and from which date?"

(4) Case No. ID 311 of 2000

Reference No. L-40012/200/2000/IR(DU)

dated 31.7.2000

Bejinder Kumar S/o Sh. Sohari Singh,
resident of House No. 1104,
Ramdarbar, Phase-II
Chandigarh ...Applicant

Versus

1. The General Manager,
   Telecom, Sector-18,
   Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of General Manager, Telecom, Chandigarh in terminating the services of Sh. Bejinder Kumar S/o Sh. Soharad Singh is just and legal? If not, to what relief the workman is entitled and from which date?"

(5) Case No. ID 323 of 2001

Reference No. L-40012/244/2001/IR(DU)

dated 6.11.2001

Chatti Lal S/o Sh. Ram Dharan Ram,
resident of House No. 233,
Ramdarbar, Phase-II,
Chandigarh ...Applicant

Versus

1. The Principal General Manager, Telecom,
Telephone Department, Sector-18-A,
Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Chatti Lal S/o Sh. Ram Dharan Ram is just and legal? If not, to what relief the workman is entitled?"

(6) Case No. ID 401 of 2000

Reference No. L-40012/334/2000/IR(DU)

dated 28.9.2000

Manoj Kumar S/o Sh. Ayodhya Saw,
resident of House No. 2493,
Sector 27-C,
Chandigarh ...Applicant

Versus

1. The General Manager,
Telecom, Sector-18,
Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of General Manager, Telecom, Chandigarh in terminating the services of Sh. Manoj Kumar S/o Sh. Ayodhya is just and legal? If not, to what relief the workman is entitled and from which date?"

(7) Case No. ID 157 of 2001

Reference No. L-40012/3/2001/IR(DU)

dated 12.4.2001

Mohan Lal S/o Sh. Teedi Ram,
resident of House No. 6294,
Maloya Colony, Chandigarh ...Applicant

Versus

1. The General Manager,
Telecom, Punjab Circle, Sector-34,
Chandigarh
2. The Principal General Manager,
Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference:

"Whether the action of Chief General Manager, Telecom, Punjab Circle, Chandigarh and the Principal General Manager, Telecom, Chandigarh, Department in ordering disengagement/termination of services of Sh. Mohan Lal a workman engaged through contractor M/s. Gupta w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled and from which date?"

(8) Case No. ID 296 of 2000

Reference No. L-40012/168/2000/IR(DU)

dated 31.7.2000

Harjit Singh S/o Sh. Dharampal,
resident of Village Dadumajra,
Near Talaab, UT, Chandigarh ...Applicant

Versus

1. The Chief General Manager,
Telecom, Punjab Circle, Sector-34,
Chandigarh
2. The Principal General Manager,
Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference:

"Whether the action of Chief General Manager, Telecom, Punjab Circle, Chandigarh and the Principal General Manager, Telecom, Chandigarh, Department in ordering disengagement/termination of services of Sh. Harjit Singh a workman engaged through contractor M/s. Gupta w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled and from which date?"

(9) Case No. ID 72 of 2001

Reference No. L-40012/519/2000/IR(DU)

dated 31.1.2001

Mukhtyar Singh S/o Sh. Puran Singh,
resident of House No. 2230,
Dadumajra Colony,
Sector 38 West,
Chandigarh ...Applicant

Versus

1. The Principal General Manager,
Telecom, Sector-18,
Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Mukhtiar Singh S/o Sh. Puran Singh w.e.f. 27.2.1999 is just and legal? If not, to what relief the workman is entitled?"

(10) Case No. ID 205 of 2001

Reference No. L-40012/12/2001/IR(DU)

dated 24.4.2001

Ranjit Singh S/o Sh. Mai Ditta,
resident of Village and
Post Office Jyanti Majri,
Tehsil Kharar, District Mohali ...Applicant

Versus

1. The Chief General Manager,
   Telecom, Punjab Circle, Sector-34,
   Chandigarh
2. The Principal General Manager,
   Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference:

"Whether the action of Chief General Manager, Telecom, Punjab Circle, Chandigarh and the Principal General Manager, Telecom, Chandigarh, in ordering disengagement/termination of services of Sh. Ranjit Singh a workman engaged through contractor R. K. Mittal w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled and from which date?"

(11) Case No. ID 227 of 2001

Reference No. L-40012/30/2001/IR(DU)

dated 27.4.2001

Jasmer Singh S/o Sh. Charanjit Singh,
resident of Village Mirapura,
Post Office Jarout,
Tehsil Derabassi, District Mohali ...Applicant

Versus

1. The Chief General Manager,
   Telecom, Punjab Circle, Sector-34,
   Chandigarh
2. The Principal General Manager,
   Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference:

"Whether the action of Chief General Manager, Telecom, Punjab Circle, Chandigarh and the Principal General Manager, Telecom, Chandigarh, in ordering disengagement/termination of services of Sh. Jasmer Singh a workman engaged through contractor M/s. Nagpal w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled and from which date?"

(12) Case No. ID 274 of 2000

Reference No. L-40012/161/2000/IR(DU)

dated 31.7.2000

Swarn Singh S/o Sh. Hardayal Singh,
resident of Village and
Post Office Sohana,
Tehsil Mohali, District Mohali ...Applicant

Versus

1. The Chief General Manager,
   Telecom, Punjab Circle, Sector-34,
   Chandigarh
2. The Principal General Manager,
   Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference:

"Whether the action of Chief General Manager, Telecom, Punjab Circle, Chandigarh and the Principal General Manager, Telecom, Chandigarh, in ordering disengagement/termination of services of Sh. Swarn Singh a workman engaged through contractor R. K. Mittal w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled and from which date?"

(13) Case No. ID 305/2000

Reference No. L-40012/193/2000/IR(DU)

dated 31.7.2000

Hare Ram Mehta S/o Sh. Shiv Nath Mehta,
resident of House No. 1104,
Phase-II, Ramdarbar,
Chandigarh ...Applicant

Versus

1. The General Manager,
   Telecom, Sector-18,
   Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of General Manager, Telecom, Chandigarh in terminating the services of Sh. Hare Ram Mehta S/o Sh. Shiv Nath Mehta is just and legal? If not, to what relief the workman is entitled from which date?"

(14) Case No. ID 63/2003

Reference No. L-40012/208/2002/IR(DU)

dated 21.3.2003

Sarwan Kumar S/o Sh. Kasturi Lal,
resident of P-1082, Transit House,
Sector-52, Kajehri,
Chandigarh ...Applicant

Versus

1. The Principal General Manager,
   Telecom, Telephone Department,
   Sector-18-A, Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom,\, Chandigarh in terminating the services of Sh. Sarwan Kumar, Ex-Peon w.e.f. 27.2.1999 without complying with the provisions of Section 25F of the I.D. Act, 1947 is just and legal? If not, to what relief the workman is entitled?"

(15) Case No. ID 153/2004

Reference No. L-40012/121/2003/IR(DU)

dated 9.3.2004

Iqbal Singh S/o Sh. Gorakh Singh,
resident of House No. 319/A,
Krishna Enclave,
Dhakoli (Zirakpur) ...Applicant

Versus

1. The Chief General Manager,
Telecom, Punjab Circle, Sector-34,
Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Iqbal Singh, Ex-Peon w.e.f. 27.2.1999 without complying with the provisions of I.D. Act is just and legal? If not, to what relief the workman is entitled?"

(16) Case No. ID 68/2001

Reference No. L-40012/515/2000/IR(DU)

dated 31.1.2001

Karamjit Singh S/o Sh. Baldev Singh,
resident of House No. 414,
Ward No. 2, Mundi Kharar
District Mohali ...Applicant

Versus

1. The Principal General Manager,
Telecom, Sector-18,
Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Karamjit Singh S/o Sh. Baldev Singh w.e.f. 27.2.1999 is just and legal? If not, to what relief the workman is entitled?"

(17) Case No. ID 66/2003

Reference No. L-40012/221/2002/IR(DU)

dated 21.3.2003

Darshan Singh S/o Sh. Pritam Singh,
resident of Village and
Post Office Bajehri,
Tehsil Kharar, District Mohali ...Applicant

Versus

1. The Principal General Manager,
Telecom, Telephone Department,
Sector-18-A, Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Darshan Singh, Ex-Lift Operating w.e.f. 27.2.1999 without complying with the provisions of Section 25F of the I.D. Act, 1947 is just and legal? If not, to what relief the workman is entitled?"

(18) Case No. ID 64/2003

Reference No. L-40012/207/2002/IR(DU)

dated 21.3.2003

Jasbir Singh S/o Sh. Hazara Singh,
resident of Village Bharongian,
Post Office Mullanpur,
Tehsil Kharar, District Mohali ...Applicant

Versus

1. The Principal General Manager,
Telecom, Telephone Department,
Sector-18-A, Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Jasbir Singh, Ex-Peon, w.e.f. 27.2.1999 without complying with the provisions of Section 25F of the I.D. Act, 1947 is just and legal? If not, to what relief the workman is entitled?"

(19) Case No. ID 69/2003

Reference No. L-40012/227/2002/IR(DU)

dated 21.3.2003

Ram Kumar S/o Sh. Ram Pyare,
resident of House No. 6312,
Maloya Colony, Chandigarh ...Applicant

Versus

1. The Principal General Manager,
Telecom, Telephone Department,
Sector-18-A, Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Ram Kumar, w.e.f. 27.2.1999 without complying with the provisions of Section

25F of the I.D. Act, 1947 is just and legal? If not, so what relief the workman is entitled?"

(20) Case No. ID 321/2001

Reference No. L-40012/245/2001/IR(DU)

dated 6.11.2001

Surjit Singh S/o Sh. Baryam Singh,
resident of Village and
Post Office Fathegarh,
District Ambala (Haryana) ...Applicant

Versus

1. The Principal General Manager,
Telecom, Telephone Department,
Sector-18-A, Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Surjit Singh S/o Sh. Baryam Singh, w.e.f. 27.2.1999 is just and legal? If not, so what relief the workman is entitled?"

(21) Case No. ID 272/2000

Reference No. L-40012/157/2000/IR(DU)

dated 31.07.2000

Shamsher Singh, S/o Sh. Karam Singh,
resident of House No. 2428,
BSNL Society, Sector 50-C,
Chandigarh ...Applicant

Versus

l. The Principal General Manager,
Telecorn, Punjab Circle,
Sector-34, Chandigarh.

2. The Principal General Manager,
Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference :

"Whether the action of Chief General Manager, Telecorn, Punjab Circle, Chandigarh and the Principal General Manager, Telecorn, Chandigarh Department in ordering disengagement/termination of services of Sh. Shamsher Singh, a workman engaged through contractor Sh. R.K. Mittal w.e.f. 27.2.1999 is just and legal? If not so what relief the workman is entitled?"

(22) Case No. ID 327/2001

Reference No. L-40012/242/2001/IR(DU)

dated 6.11.2001

Labh Singh S/o Sh. Banarsi Dass,
resident of Village Haripur Hinduya,
Post Office Rampur Sainia,
Tehsil Derabassi, District Mohali ...Applicant

Versus

1. The Principal General Manager,
Telecom, Telephone Department,
Sector-18-A, Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating Sh. Labh Singh S/o Sh. Banarsi Dass, w.e.f. 27.2.1999 is just and legal? If not, so what relief the workman is entitled?"

(23) Case No. ID 304/2000

Reference No. L-40012/192/2000/IR(DU)

dated 31.7.2000

Jaswant Singh S/o Sh. Mehma Singh,
resident of Village Manauli,
District Mohali ...Applicant

Versus

1. The General Manager,
Telecom, Sector-18A,
Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of General Manager, Telecom, Chandigarh in terminating the services of Sh. Jaswant Singh S/o Sh. Mehma Singh is just and legal? If not, to what relief the workman is entitled and from which date?"

(24) Case No. ID 312/2000

Reference No. L-40012/199/2000/IR(DU)

dated 31.7.2000

Inderjit Chaudhary S/o
Sh. Bhukhan Chaudhary,
resident of House No. 2493,
Sector 27-C,
Chandigarh ...Applicant

Versus

1. The General Manager,
Telecom, Sector-18,
Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of General Manager, Telecom, Chandigarh in terminating the services of Sh. Inderjit Chaudhary S/o Sh. Bhukhan Chaudhary, is just and legal? If not, to what relief the workman is entitled and from which date?"

(25) Case No. ID 22/2001

Reference No L-40012/391/2000/IR(DU)

dated 27.12.2000

Rashid Khan S/o Sh. Dina,
resident of House No. 58,
Village Nadyali, Near Masjid,
Tehsil and District Mohali ...Applicant

Versus

l. The Chief General Manager,
Telecorn, Punjab Circle,
Sector-34, Chandigarh.

2. The Principal General Manager,
Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference :

"Whether the action of Chief General Manager, Telecom, Punjab Circle, Chandigarh and the Principal General Manager, Telecom, Chandigarh in ordering disengagement/termination of services of Sh. Rashid Khan, a workman engaged through contractor Sh. R.K. Mittal w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled from which date?"

(26) Case No. ID 399/2000

Reference No. L-40012/311/2000/IR(DU)

dated 28.9.2000

Vinod Kumar Ray S/o
Sh. Manohar Ray,
resident of House No. 1107,
Village Burail,
Chandigarh ...Applicant

Versus

1. The General Manager,
Telecom, Sector-18,
Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of General Manager, Telecom, Chandigarh in terminating the services of Sh. Vinod Kumar S/o Sh. Milan Ram, is just and legal? If not, to what relief the workman is entitled and from which date?"

(27) Case No. ID 124/2001

Reference No. L-40012/556/2000/IR(DU)

dated 13.3.2001

Karamjit Singh S/o
Sh. Parkash Singh,
resident of Village Padach,
Post Office Mullapur,
Tehsil Kharar, District Mohali ...Applicant

Versus

1. The General Manager,
Telecom, Sector-18,
Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom, Chandigarh in terminating the services of Sh. Karamjit Singh S/o Sh. Parkash Singh, w.e.f. 27.02.1999 is just and legal? If not, to what relief the workman is entitled?"

(28) Case No. ID 62/2003

Reference No. L-40012/199/2002/IR(DU)

dated 21.3.2003

Randhir Singh S/o Sh. Isam Singh,
resident of House No. 2435,
Ramdarbar Colony,
Phase-II, Chandigarh ...Applicant

Versus

1. The Principal General Manager,
Telecom, Telephone Department,
Sector-18-A, Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of Department of Telecom (BSNL), Chandigarh in terminating the services of Sh. Randhir Singh, Security Guard, w.e.f. 27.2.1999 without complying with the provisions of Section 25 (F), (G) & (H) of the I.D. Act, 1947 is just and legal? If not, to what relief the workman is entitled and from which date?"

(29) Case No. ID 335/2000

Reference No. L-40012/268/2000/IR(DU)

dated 29.8.2000

Shivji Ram S/o Sh. Ram Dharan Ram,
resident of House No. 233,
Ramdarbar, Phase-II,
Chandigarh ...Applicant

Versus

1. The General Manager,
Telecom, Sector-18,
Chandigarh ...Respondent

Term of Reference:

"Whether the action of the management of General Manager, Telecom, Chandigarh in terminating the services of Sh. Shivji Ram S/o Sh. Ram Dharan Ram, is just and legal? If not, to what relief the workman is entitled to and from which date?"

(30) Case No. ID 140/2001

Reference No. L-40012/581/2000/IR(DU)

dated 26.3.2001

Jagjiwan Ram S/o Sh. Ram Saran Ram,
resident of House No. 233,
Ramdarbar, Phase-II,
Chandigarh ...Applicant

Versus

1. The Chief General Manager,
   Telecorn, Punjab Circle,
   Sector-34, Chandigarh.
2. The Principal General Manager,
   Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference :

"Whether the action of Chief General Manager, Telecom, Punjab Circle, Chandigarh and the Principal General Manager, Telecom, Chandigarh in ordering disengagement/termination of services of Sh. Jagjiwan Ram, a workman engaged through contractor Sh. R.K. Mittal w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled from which date?"

(31) Case No. ID 204/2001

Reference No. L-40012/14/2001/IR(DU)

dated 24.4.2001

Ramjiwan Ram S/o Sh. Ram Saran Ram,
resident of House No. 233,
Ramdarbar, Phase-II,
Chandigarh ...Applicant

Versus

1. The Chief General Manager,
   Telecorn, Punjab Circle,
   Sector-34, Chandigarh.
2. The Principal General Manager,
   Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference :

"Whether the action of Chief General Manager, Telecom, Punjab Circle, Chandigarh and the Principal General Manager, Telecom, Chandigarh in ordering disengagement/termination of services of Sh. Ramjiwan Ram, a workman engaged through contractor Sh. R.K. Mittal w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled from which date?"

(32) Case No. ID 317/2000

Reference No. L-40012/292/2000/IR(DU)

dated 24.8.2000

Sukhdarshan Singh S/o
Sh. Gurmail Singh,
resident of Village Ratwara,
Post Office Mullanpur,
Tehsil Kharar, Mohali (Punjab) ...Applicant

Versus

1. The Chief General Manager,
   Telecorn, Punjab Circle,
   Sector-34, Chandigarh.
2. The Principal General Manager,
   Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference :

"Whether the action of Chief General Manager, Telecom, Punjab Circle, Chandigarh and the Principal General Manager, Telecom, Chandigarh in ordering disengagement/termination of services of Sh. Sukhdarshan Singh, a workman engaged through contractor Sh. Anil Kumar w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled from which date?"

(33) Case No. ID 427/2000

Reference No. L-40012/372/2000/IR(DU)

dated 31.10.2000

Dara Singh S/o Sh. Babu Singh,
resident of Village Patran,
P.O. Chandiala Sudan,
Tehsil Kharar, District Mohali (Punjab) ...Applicant

Versus

1. The Chief General Manager,
   Telecorn, Punjab Circle,
   Sector-34, Chandigarh.
2. The Principal General Manager,
   Telecom, Sector-18, Chandigarh ...Respondents

Term of Reference :

"Whether the action of the management of Chief General Manager, Telecom, Punjab Circle, Chandigarh and the Principal General Manager, Telecom, Chandigarh in ordering disengagement/ termination of services of Sh. Dara Singh, a workman engaged through contractor Sh. R.K. Mittal w.e.f. 27.2.1999 is just and legal? If not to what relief the workman is entitled and from which date?"

APPEARANCES :

For the workmen : Shri Ashwani Bakshi advocate for Sr. No.1 to 32. Shri P. K. Longia advocate for Sr. No.33.

For the management : Shri G. C. Babbar advocate in all 33 cases.

AWARD

Passed on : 26-09-2013

2. The above 33 industrial disputed have been remanded by the Hon'ble High Court vide order dated 23.05.2013 passed in Civil Writ Petition number 10665 of 2011 and CWP no. 21919 of 2011. The relevant portion of the order passed by the Hon'ble Punjab & Haryana High Court is reproduced below.

> "Learned counsel would then submit that the three matters being connected and the issue of master-servant relationship involved in all the three cases deserves to be remanded to return proper findings by resolving the conflict of decisions. His alternative plea is that in case direct employment is not established the learned Tribunal ought to have then addressed itself to the question of relief of reinstatement at the hands of the contractor since the termination of the workmen was in contravention of Section 25-F of the Industrial Disputes Act, 1947. On the other hand, Mr. Anil Rathee, learned counsel appearing for the management-BSNL has been unable to reconcile the two sets of awards on the same subject matter on substantially the same evidence by the same Presiding Officer.
>
> There can be no doubt that there is apparent conflict of decisions in the three cases, two on the one hand and one on the other with both parties feeling aggrieved by the judicial dispensation. In the circumstances, there is a broad consensus on both sides that the three impugned awards deserve to be set aside and the matter remanded for fresh consideration by clubbing the three matters to be heard afresh. It is also well possible for the learned Tribunal to re-examine the matters and record consistent findings without letting in any further evidence by the respective parties. Resultantly, the impugned awards in the three cases are set aside. The matter is remanded to the learned Tribunal for fresh consideration untrammeled by anything said in this order which will not be taken as an expression on the merits of the claims set up by either side. The Presiding Officer, CGIT-cum-Labour Court-I, Chandigarh, is directed to decide the three cases afresh on the evidence already led after hearing both the parties. The Presiding Officer would endeavor to decide the cases by passing a fresh award/s within four months from the date when this order is placed before it. It would remain in the discretion of the Presiding Officer to either deal with the cases separately or by clubbing them.
>
> Ordered accordingly.
>
> Petitions stand disposed of without any order as to costs."

3. On the request of the learned counsels for the parties these 33 above mentioned cases are being disposed off by common award. The brief facts in all above mentioned 33 cases are, that the services of workmen were terminated on 27.02.1999 although the workmen completed 240 days of service with the management and the management while terminating the services of the workmen violated the mandatory provisions Section 25F, 25H and 25T of the ID Act 1947. It is further pleaded by the workmen that anything if shown to be engaged through contractor which was a sham transaction and workmen were directly working under the supervisions and control of the management. As the work on which they were engaged was of perennial nature, therefore the workmen demanded that their termination may be declared as illegal and void.

4. Management filed written statement in all the above 33 references taking same plea in all references. The management alleged that Department of Telecom now known as BSNL is not an Industry nor the claimants are workmen. No claimant was engaged nor recruited by the management nor any appointment letter was issued nor their services were terminated by the management nor the management paid to the workman. In fact the management entered into a contract with contractor for providing the labour for emergency work. The contractor supplied the labourer. The payment was directly made to the contractor. Management also pleaded that the workmen were not appointed by the management. The question of termination of service without notice or without pay does not arise. It was also denied that the workmen have completed 240 days with the department of the management. The Department of Telecom has imposed a partial ban on 30.3.1985 for engagement of casual labourer for any type of work and a complete ban on 22.6.1988 and it was decided that there shall be no recruitment for casual labourer even for specific jobs. After the issue of notice dated 22.6.1988, a need was felt for amending Para 193 of P&T Manual, which permits engagement of casual labourer directly or through contractor. In lieu of the ban imposed by the DOP Letter dated 30.3.1985 and 22.6.1988, the case of workmen for engagement as workmen cannot be considered. The management also mentioned in written statement that Department of Telecom has sanctioned 500 posts of Group D. Workmen and other similarly persons approached the Hon'ble Central Administrative Tribunal Bench by filling OA No. 980/PB/2000. Hon'ble Tribunal vide order dated 24.1.2001 directing the respondent passed the following order :

> "On consideration of the matter and after pursuing the record of the case, we find that respondents are required to consider the applicants for the purposes of regular mazdoors, keeping in view of the decision rendered by the Apex Court in Excise Superintendent Malkapatnam Krishna District, AP Vs. K.B.N Visheshwara Rao and Others, alongwith other candidates sponsored by the Employment Exchange. Once the cases of the applicants are liable to be

considered for the post of regular Mazdoor as per the written statement, the relief claimed by the applicants in the present O.A. stands granted to them as they had prayed their cases for regular appointment be ordered to be considered.

In that view of the matter, this O.A. is disposed of as infructous. Interim order dated 27.11.2000 stands vacated."

5. Management also pleaded that the workmen might have been engaged by the contractor and the management cannot be fastened with any liability of the contractor. The workmen were not recruited according to the recruitment rules by the management. Management also pleaded in its written statement that no seniority list was maintained in respect of the labourer supplied by the contractor. The question of retaining juniors to the workmen does not arise. In fact keeping contract labour has been dispensed with and the contractor was not further renewed. There is no violation of Section 25 F and 25 C of the I.D. Act 1947. It was also pleased that no new appointment has been made after the abolition of the system of engaging casual labour directly or through contractor which has been dispensed with on 12.2.1999 as per Govt. policy.

6. Earlier 41 cases along with I D number 157 of 2001 Mohan Lal were disposed off jointly as similar question of fact and law was involved. 32 workmen as mentioned above challenged the award dated 27.04.2010 before the Hon'ble Punjab & Haryana High Court and the earlier award dated 27.04.2010 was set aside and these 32 cases industrial disputes have been remanded to this Court to decide the references afresh. Similarly Dara Singh also challenged the award dated 28.10.2010 in CWP No. 21919/2011 before the Hon'ble Punjab & Haryana High Court and vide order dated 23.5.2013 and the earlier award dated 28.10.2010 was set aside and this industrial dispute has been remanded to this Court to decide the reference afresh.

7. On the request of the counsels for the parties. these 33 cases along with the case of Dara Singh Vs. Telecom ID No. 427/2000 which was also remanded by the order dated 23.5.2013 passed in CWP No. 21919 of 2011, are being taken up for the decision. I have heard the learned counsel for the parties gone through the evidence as recorded in all the 33 cases alongwith the case of Dara Singh mentioned above and have also gone through the different cases laws relied upon and filed by the counsel for the parties.

8. The learned counsel for the workmen relied upon JT 2010 (1) SC 598, Harjinder Singh versus Punjab State Warehousing Corporation. JT 2010 (1) SC 618 State of U.P. and other Versus Saroj Kumar Singh, JT 2010(2) Supreme Court 599 Krishan Singh Versus Executive Engineer, 2010(3) SLR page 663 Anoop Sharma Versus Executive Engineer, 2010(3) SLR 673 General Manager Allahabad Bank Versus Shib Shankar Mukherjee, 2011 Lab. I.C. 2799 Devinder Singh Versus Municipal Council Sanaur, 2011 Lab I.C. 2807 Smt. Shipra Jindal Versus Union of India & ors., 1981(2) Service Law Reporter 11 Mohan Lal Versus Bharat Electronics Ltd., AIR 1981 Supreme Court 422 Surender Kumar Verma Versus Central Govt. Industrial Tribunal-cum-Labour Court Delhi and another, AIR 2001 Supreme Court 3527 Steel Authority of India Ltd. Versus National Union Water Front Workers.

9. The learned counsel for the management relied. upon 1978(4) Supreme Court cases 257, Hussain Bai Versus Alath factory and others, AIR 1999 Supreme Court 1160 Haryana Electricity Board Versus Suresh Kumar and AIR 1995 Supreme Court 1893(1) Gujarat Electricity Versus Hind Majdoor Sabha and others, and on the judgement of the Hon'ble Supreme Court in the case of Secretary, State of Karnatka and others Vs. Uma Devi and others. The management also relied upon a judgement of Hon'ble High Court of Delhi dated 20.3.2013 in WP(C) 3150/2007 BSNL Vs. Attar Singh and others, AIR 2004 Supreme Court 969 Ram Singh and others Versus U.T. Chandigarh, and a judgement of Hon'ble Supreme Court in Civil Appeal No. 292 of 2009 Bharat Sanchar Nigam Limited, Jammu Vs. Teja Singh.

10. Both the parties have heard.

11. As per references, the short questions for adjudication were referred, whether the action of the management in terminating the services of the workmen is just and legal? The management clearly stated that the workmen were not their employees. Workmen were supplied by the contractor as per agreement. Photocopy of the agreement have been filed. Workman's counsel argued that no original agreement or contract has been filed despite the repeated orders of the Tribunal as the agreement is a sham document. Counsel for the management rebutted the arguments advanced by the counsel for the workmen and submitted that agreement or contract can be effective even without any writing or document. Even an oral agreement between the parties can take effect. Counsel for the management referred the statement of contractor Ramesh Kumar Mittal recorded in ID No. 157 of 2001 Mohan Singh vs. Telecom in which Ramesh Kumar Mittal acknowledge the agreement. The agreement was made between the management and the contractor to supply the labour. Para No. 5 of the agreement clearly mentioned that the department will not be responsible for any dispute arising as a result of contravention of labour law. This agreement also stipulates in Para No.7 that the labour engaged will have no claim from the department for regular employment. The parties to this agreement acknowledge this agreement. Besides this, in ID No. 233 of 2001 Ashwani Kumar Vs.

Telecom, the statement of the workman is relevant. In this case, workman Ashwani Kumar clearly stated in cross-examination that he has no document in his possession to show appointment made by any officer of the department. He is not having in his possession certificate or any other document to show his employment from 6.3.1996 to 27.2.1999 with the management. He also stated that he is not having any document to show that the wages were paid to him (workman) directly by any officer. He has clearly stated that no termination letter was given.

12. I have gone through the case laws cited by the workmen. These case laws are not applicable to the facts and circumstances of the cases in hand as the same are quite different from the facts and circumstances of the cases in hand.

13. In the light of the above statement of the workmen, it is clear that the workmen fails to established that they were the employees of the management i.e. Telecom department. In the case of Ram Singh and others Vs. Union Territory Chandigarh and others. Dharam Pal and Others Vs. Union Territory, Chandigarh and others, and Amar Kumar and others Vs. UT, Chandigarh and others (AIR 2007 S.C.969), Hon'ble Apex Court observed that the regularization of the service of the contract labour-prayer for- relationship of employer and employees is question of fact has to be raised and proved before industrial adjudicator no relief can be granted before such adjudication. Hon'ble Apex Court dismissed the appeal. In BSNL Vs. Attar Singh (Supra) Hon'ble High Court of Delhi has observed that in respect of workmen who are found not entitled to wages under Section 17-B of the Act, no compensation is payable as they, an any event are not workmen of the petitioner and, consequently no case of retrenchment is made out by them against the petitioner. In Bharat Sanchar Nigam Limited Jammu Vs. Teja Singh (Supra). The Hon'ble Apex Court allowed the civil appeal moved by Bharat Sanchar Nigam Ltd. Jammu.

14. As stated above, the workmen in all the above 33 cases failed to establish the relationship of employee and employer, therefore, the workmen are not entitled to reinstatement in service as claimed by all of them ill their claim statement. Therefore, in view of the above discussion, the references are answered against the workmen as they are not entitled to any relief against the management. The references are answered accordingly. Central Govt. be informed. A soft copy as well as hard copy be sent to the Central Govt. for publication of the award. The office is also directed to keep the original award in the leading case of ID No. 223 of 2001 Ashwani Kumar Vs. Telecom and one photocopy be placed in all the remaining 32 cases.

Chandigarh.
26-09-2013

S. P. SINGH, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चेयरमैन, अ/क्यू मग (वक्स) अम्बाला कैन्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1325/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था ।

[सं. एल-14012/2/2007-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 584.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1325/2007) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Chairman, A/Q MG (WKS) and their workman, which was received by the Central Government on 23.01.2014.

[No. L-14012/2/2007-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. 1325/2007

Registered on 30.7.2007

Miss Anita D/o Shri S.S. Pati Ex-Serviceman,
H.No.84, S-IV, Partap Nagar,
Ambala Cantt (Haryana) ...Petitioner

Versus

The Chairman, A/Q MG (WKS),
Lt. Col. S.C. Sipaiya, Bhihpi Subarea,
Ambala Cantt. (Haryana) ...Respondent

APPEARANCES

For the Workman : Sh. S.K. Sharma Advocate

For the Management : Sh. C.L. Sharma Advocate

AWARD

Passed on 24.9.2013

Central Government vide Notification No. L-14012/2/2007-IR(DU)) Dated 23.7.2007, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-Section (2-A) of the Industrial Disputes Act, 1947

(hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :

> "Whether the action of the management of Golden Lion Canteen, Ambala Cantt. in terminating the services of their workman Miss Anita w.e.f. 21.8.2003 is legal and justified? If not, to what relief the workman is entitled to?"

In response to the notice, the workman appeared and submitted statement of claim pleading that she was appointed as Sales Girl on 1.8.1999 in the Golden Lion Canteen under the Canteen Department at Ambala Cantt. by finding her suitable and was initially paid Rs.1500 and the wages were increased from time to time. That the services of the persons namely Nirmal Singh and Mohinder Singh who were junior to her were regularized and she submitted a written representation on 14.9.2002 for regularization of her services. She again made a representation on 12.8.2003. However her services were terminated by verbal order on 21.8.2003 which are illegal as she has completed more than 240 days of service.

Respondent-management filed written statement pleading that the workman was not eligible for appointment and no selection process was adopted. It is denied that the persons junior to her were appointed. The workman was engaged as per requirement and did not complete the requisite period. She approached the Central Administrative Tribunal who dismissed her petition vide order dated 20.1.2004. That the present claim petition is not maintainable.

Parties led their evidence.

During the pendency of the reference, the management moved an application that the Central Government was not competent to make the reference as the employees of Golden Lion Canteen are not Government employees and prayed that the reference be dismissed.

Reply was filed controverting the averments.

I have heard Mr. S.K. Sharma counsel for the workman and Mr. C.L. Sharma counsel for the management.

It is the case of the workman itself that she was appointed as a Sales Girl on 1.8.1999 in the Golden Lion Canteen under the Canteen Department at Ambala Cantt. Thus she was an employee of the Unit Run Canteen. In R.R. Pillai Vs. Commanding Officer HQ S.A.C. (U) and Others in Civil Appeal No.3495 of 2005 the Hon'ble Supreme Court has specifically held that employees of the Unit Run Canteen are not Government servants. In view of this pronouncement of the Apex Court, the workman cannot be held to be Government servant. When it is so, the Central Government is not the competent authority to make the present reference to this Tribunal. Hence the present reference is not maintainable and is answered accordingly.

Let two hard copies and one soft copy of the Award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रोजेक्ट मैनेजर, ई टी डी सीमेंटेशन इंडिया लिमिटेड, मंडी एंड उ.र. इंफ्रास्ट्रक्चर कंपनी प्राइवेट लिमिटेड, बिलासपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 221/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था ।

[सं. एल-42012/95/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 585.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 221/2011) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Project Manager, ITD Cementation India Ltd. Mandi and U.R. Infrastructure Company Pvt. Ltd. and their workman, which was received by the Central Government on 23.01.2014.

[No. L-42012/95/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT II, CHANDIGARH

Present : Sri A. K. Rastogi, Presiding Officer

Case No. I.D. No. 221/2011

Registered on 8.12.2011

Sh. Bhoop Singh son of Shri Paras Ram,
RVPO Jamthal, Tehsil Sadar, Bilaspur ...Applicant

Versus

1. The Project Manager,
   M/s. ITD Cementation India Ltd.,
   Kol Dam Hydro Electric Power Project,
   Village Kayan, PO Slapper,
   District Sundernagar,
   Mandi (HP)

2. M/s. U.R. Infrastructure Company
   Pvt. Ltd., Village Chamb,
   Post Office Harnora, Bilaspur ...Respondents

APPEARANCES:

For the workman : None

For the Management : None for respondents

AWARD

Passed on 19.3.2012

Central Government vide Notification No. L-42012/95/2010-IR(DU) Dated 14.10.2011, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section 2(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the Management of M/s. U.R. Infrastructure Company Pvt. Ltd., New Delhi, a sub-contractor of M/s. Italian Thai Development Public Co. Pvt. Ltd., Koldam Hydro Electric Power Project, Mandi in suspension of Shri Bhoop Singh son of Shri Paras Ram welder w.e.f. 13.10.2007 and to not allow on duty is legal and justified? What relief the workman is entitled to?"

After receiving the reference notices were issued to the parties but none of them turned up despite notices sent through registered posts on 20.1.2012. Notices not received back undelivered. Hence services of the notices are presumed on them. As the workman fails to file claim statement, a no dispute award is passed in the case. Let two copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, टेलिकॉम, भटिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 267/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/237/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 586.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 267/2005) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the General Manager, Telecom, Bathinda and their workman, which was received by the Central Government on 23.01.2014.

[No. L-40012/237/2001-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer.

Case No. I.D. No. 267/2005

Registered on 21.10.2005

Smt. Asha Rani, C/o Sh. N.K. Jeet, 27349,
Lal Singh Basti Road, Bathinda ...Petitioner

Versus

The General Manager, Telecom,
Bathinda ...Respondent

APPEARANCES:

For the workman : Ex parte.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on 9.12.2013

Central Government vide Notification No. L-40012/237/2001-IR(DU)) Dated 6.11.2001, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the Management of General Manager Telecom, Bathinda in terminating the services of Smt. Asha Rani W/o Sh. Kake Ram is just and legal? If not to what relief the workman is entitled to and from which date?"

In response to the notice, the workman appeared and submitted statement of claim pleading that she was serving as sweeper with the management on a permanent job from 1.1.1994 on a salary of Rs.300/- per month. Her services were terminated on 1.3.1999 without notice or inquiry. That Juniors to workman were retained in service. Since her termination is against the provision of act, therefore, she be retained in service with all the consequential benefits.

Management filed written reply denying the relationship of employer and employee and further pleaded that the workman was never engaged by the management. That management gave a contract for some certain jobs and she may have been employed by the contractor and she was never an employee of the management.

In support of her case the workman appeared in the witness box and filed her affidavit reiterating the case as stated in the claim petition.

But the workman was proceeded against ex parte vide order dated 10.12.2010.

The management did not lead any evidence.

I have heard Sh. Anish Babbar counsel for the management.

It is the case of the workman that she was employed by the management on a permanent job of Sweeper on 1.1.1994 on salary of Rs.300/- per month and her services were terminated on 1.3.1999. But she did not produce any appointment letter on the file to establish that she was actually employed by the management at any point of time. Again there is no evidence that she was ever paid any wages by the management. In the absence of any cogent evidence on the file that the workman was actually employed by the management and her services were terminated by the management, it cannot be said that she was an employee of the management and her services were terminated by it. Being so, she is no entitled to any relief and the reference is answered against her. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 587.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट ऑफ पोस्ट ऑफिस, डिपार्टमेंट ऑफ पोस्ट्स, रोहतक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 65/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/76/2004-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 587.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 65/2004) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Sr. Superintendent of Post Office, Department of Posts, Rohtak and their workman, which was received by the Central Government on 23.01.2014.

[No. L-40012/76/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. Rastogi, Presiding Officer

Case No. I.D. No.65/2004

Registered on 17.1.2005

Sh. Madan Lal S/o Sh. Amar Singh,
H.No.132, Pocket A-3, Sector 7,
New Delhi ...Petitioner

Versus

The Sr. Superintendent of Post Office,
Deptt. of Posts, Rohtak Division,
Rohtak ...Respondents

APPEARANCES :

For the workman : Sh. Surinder Gandhi, Adv.

For the Management : Sh. R.P. Singh, Adv.

AWARD

Passed on 23.7.2013

Central Government vide Notification No. L-40012/76/2004 -IR(DU) Dated 25.11.2004, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of Sr. Supdt. of Post Offices, Rohtak in dismissal of services of Sh. Madan Lal, EDBPM S/o Sh. Amar Singh, w.e.f. 31/10/2001 is just and legal? If not, to what relief the workman is entitled to?"

As per claim statement the workman was working on the post of EDBPM at village Khadwali District Rohtak since 1.11.1974. On 10.11.2000 he was charge-sheeted to embezzle a total amount of Rs.400/- deposited by three account-holders on 19.3.1999 in their respective accounts. The workman had made the deposit entries in the passbooks and R.D journal of the office but he did not deposit the said amount in Government account. The workman had denied the charges and an inquiry followed. According to the workman the inquiry conducted by the Inquiry Officer is false, fictitious and baseless as copy of charge-sheet as well as the list of witnesses were not supplied to the workman at the time of inquiry, no chance of hearing was given to him nor he was given any opportunity to cross-examine the witness also. Copy of inquiry report was not supplied by the Inquiry Officer to the workman and inquiry proceedings were not written in his presence. It has been alleged by him that on the relevant date i.e. 19th March, 1999 he was ill and under the treatment of a registered Vaid Ram Kishan and he had submitted medical certificate. He was not on duty on that

date. He never embezzled any amount. According to the claim statement the alleged amount had been given to one Ashu the son of workman's brother-in-law, by the depositors and the said boy had made the entries in the relevant passbooks but he did not disclose the fact to the workman. The two of the depositors Bhup Singh and Satpal were not produced in the inquiry and the statements given by the witnesses during the preliminary inquiry under undue pressure were exhibited by the Presenting Officer. The punishing authority has wrongly mentioned in the dismissal order that the statement of the workman was not acceptable and he had made up the story of his false illness and false information regarding the working of Ashu son of his brother-in-law to save his skin. According to the workman, management authority wanted to adjust their near and dear person in his place and the story of the management was just to kick out the workman from the service. His appeal was also rejected by the Chief Post Master General, Haryana Civil, Ambala. The workman has alleged that his dismissal is absolutely illegal. He has prayed for reinstatement with continuity of service and back wages.

The claim was contested by the management on the ground that Department of Post is not an industry and its employees are not workmen and the Extra Departmental Agents now known as Gramin Dak Sewaks are the holders of civil posts and their service matters are to be dealt with by the Central Administrative Tribunal and this Tribunal has no jurisdiction in the matter. On merits, it was alleged that the inquiry was conducted as per departmental rules and instructions on the subject, and full opportunity was given to the workman. Charge-sheet along list of witnesses and list of documents had been issued to the workman under registered AD. Every chance was given to him to nominate his Assisting Officer to attend the inquiry proceedings and to cross-examine the witness. The details of each day proceedings were recorded in the daily order sheets and one copy of each daily order sheet was given to the workman either in person or through registered post. Copy of inquiry report was also supplied to him under registered AD. The punishment order was passed on 31.10.2001 after giving due consideration to all the relevant facts and record of inquiry. It was denied that the workman was not on duty on 19.3.1999 and he did not embezzle any amount. It was also denied that the depositors had given the amount to the son of workman's brother-in-law and the latter had made the entries in the passbook. According to the management the deposit entries had been made in the passbook by the workman and the workman and the depositors had admitted this fact in their respective statements. Material witnesses could not be examined in the inquiry as they did not attend the inquiry despite summons repeatedly issued to them. The workman had been given every opportunity to defend his case but he did not nominate any Assisting Officer and absented himself also from the inquiry without any information. His appeal was rejected after due consideration of facts and circumstances of the case.

In replication the workman asserted that the Department of Posts is an industry and the petitioner is a workman and this Tribunal has jurisdiction. Rest of the replication is the repetition of the claim statement.

In support of its case workman examined himself but his cross-examination could not be completed as the management wanted to submit the inquiry record to confront him. On 4th August, 2006 his statement was deferred. His statement could not be concluded sometimes due to his absence or sometimes due to the absence of his counsel and sometimes due to the absence of management. On 30.6.2010 the notices were issued to the workman by registered post. In reply, a letter was received from the workman in which he requested for adjournment on account of his illness and for fixing the case in September or October 2010. Considering his request the case was adjourned to 13.10.2010 with a notice to workman giving him the information about the date fixed but he failed to appear on 13.10.2010 and also on next date 25.11.2010. Therefore the case was ordered ex parte against him on 25.11.2010. On the next date 19.1.2011 management witness tendered his affidavit in evidence. Thereafter even after several dates the workman did not appear and therefore the arguments of management were heard.

I have considered the arguments of management and perused the evidence and the inquiry record. The inquiry record shows that on the first date of hearing in the inquiry the workman was present and he had admitted to have received the charge-sheet and had not admitted the charge on the ground that he had deposited Rs. 402 on 19.5.2000. He had been given opportunity on his request to examine the documents with the help of his Assisting Officer but on the next date the workman did not appear in the inquiry and the inquiry proceedings were adjourned. The copy of the order sheet had been sent to workman by registered post. But on the next date also the workman remained absent hence the departmental proceedings were held ex parte. The workman however was provided last opportunity to nominate his Assisting Officer within a week after receipt of the order sheet and the order sheet was sent to the workman by registered post. The inquiry was adjourned to 14.3.2001. On 14.3.2001 the workman appeared, but in the afternoon and before his appearance Surinder, Ramesh Chand and C.B. Singh Inspector (PG) had been examined. Surinder is one of the depositors. The copies of their statements were given to the workman when he appeared. The workman did not nominate any person as his A.O that day also. He however had informed that he had no defence document and defence witness to defend his case.

Thereafter, on several dates the inquiry could not proceed further and on 11.5.2001 the management closed its evidence. On 4.6.2001 the workman was examined. The

copy of the inquiry report had been sent to the workman and after considering his representation the punishment order was passed.

It was submitted on behalf of management that in the inquiry the three depositors namely Bhup Singh S/o Sh. Chand Ram, Satpal Singh S/o Sh. Meher Singh and Surinder S/o Sh. Jage Ram who had deposited the money had been summoned. But out of these three depositors only Surinder Singh S/o of Sh. Jage Ram appeared in the inquiry and supported the charge framed against the workman. The other two depositors/witnesses did not appear in the inquiry despite repeated notices to them. Apparently they had been won over by the workman, but from the statement of Surinder one of the charges framed against the workman stands proved. It falsifies the workman's story that he was ill on the relevant date 19.3.1999 and was not on duty on that date and the depositors had given the amount to the son of his brother-in-law namely Ashu. There is nothing on record to show that the workman was on leave on 19.3.1999 and he had sent the medical certificate to the department.

The learned counsel for management argued that it was for the workman to prove that he was not on duty on 19.3.1999 and the depositors had given the amount to his brother-in-law Ashu. The workman in his claim statement has wrongly put the burden on the management to examine the said Vaid under whose treatment he was, and Ashu. He argued that though the statement of Surinder the depositor had been recorded before the appearance of the workman on 14.3.2001 after lunch. But the copy of the statement of the witnesses had been given to the workman and he had not requested to cross-examine the witnesses.

I agree with the learned counsel for management that the statement of Surinder is sufficient to prove the embezzlement by the workman at least in the accounts related to the witnesses. I am of the view that the amount embezzled is not relevant. Relevant is the act of the employee who was the custodian of the public money.

From the above going discussion I am of the view that the inquiry held in the matter was fair and proper and the punishment awarded to the workman was also proper. Workman is not entitled to any relief. Hard and soft copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 588.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर, म्युनिसिपल कारपोरेशन ऑफ डेल्ही, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 47/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-1-2014 को प्राप्त हुआ था ।

[सं. एल-16012/01/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 588.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 47/2009) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 23.01.2014.

[No. L-16012/01/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No.47/2009

Smt. Anna Kuddi,
W/o Shri Panchalam,
R/o A-393, T Huts Indra Colony,
Camp Trinagar
Delhi 110 035 ...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi,
Civic Centre, Kamla Market,
New Delhi ...Management

AWARD

Twelve days training programme in the field of computer education was organized in batches for teachers by the Municipal Corporation of Delhi (in short the Corporation), Training programme was carried out at six centres during the year 2007-08, 2008-09 and 2009-10. Computer training was imparted to its teachers by the Corporation in 60 batches, which training started on 27.04.2007 and came to an end on 22.10.2009. At one of the Centres located at Science Centre, Tilak Nagar, New Delhi, Smt. Anna Kuddi was engaged as a safai karamchari on daily wage basis. She was engaged as such for limited period of training programme for 27 batches only. When training programme came to an end, there remained no occasion for engagement of Smt. Anna Kuddi as safai karamchari on daily wage basis. Taking it to be an act of retrenchment of her service, Smt. Anna Kuddi raised an industrial dispute before the Conciliation Officer, seeking

her reinstatement in the service of the Corporation. Her claim was contested by the Corporation. On failure of conciliation proceedings, failure report was submitted to the appropriate Government by the Conciliation Officer. On consideration of failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-16012/01/2012-IR(DU), New Delhi, dated 23.08.2012 with following terms:

> "Whether the action of the management of Municipal Corporation of Delhi in terminating the services of Smt. Anna Kuddi W/o Shri Panchalam, Ex-Daily Wages Assistant with effect from 22.10.2009 is justified nor not? If not, what relief will be given to the workman and from which date?"

2. Claim statement was filed by Smt. Anna Kuddi pleading that she worked as safai karamchari at computer seminar, held at Science Centre, Tilak Nagar, New Delhi, on temporary basis with effect from 29.11.2007 to 31.12.2007, 01.01.2008 to 31.12.2008 and 02.01.2009 to 22.10.2009. She worked honestly to entire satisfaction of her superiors. On account of her loyal and sincere work, she was awarded certificate of merit in the year 2007-08. However, her services were terminated with effect from 22.10.2009 without any reason. She had completed 120 days continuous service and was entitled for grant of temporary status. Her services were dispensed with in an illegal manner. She had been discriminated when one Shri Raj Kumar, junior to her, was allowed to continue in service. She is a member of scheduled caste community and ought to have been absorbed against a reserved vacancy. She claims reinstatement in service of the Corporation with continuity and full back wages.

3. Demurral was made to her claim by the corporation pleading that the claimant was engaged as safai karamchari on daily wages for specific purpose for some of computer seminars conducted at Science Centre, Tilak Nagar, New Delhi. Since her engagement was for a specific period, her termination, when purpose of her engagement came to an end, does not amount to retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act, 1947 (in short the Act). Even otherwise, she had not worked for 240 days in any calendar year. She was engaged for a few seminars in the year 2007-08, 2008-09 and 2009-10. Seminars lasted till 22.10.2009 and her services came to an end. Her claim for grant of temporary status on completion of 120 days continuous service is unfounded. Provisions of section 25F, 25G and 25H of the Act are not applicable in her case. Her services came to an end when computer training programme stood completed. There was no occasion for the Corporation to terminate her services. No person with the name of Shri Raj Kumar, junior to her, was working at the Science Centre, Tilak Nagar, New Delhi. Smt. Anna Kuddi is not entitled to relief of reinstatement in service.

4. On pleadings of the parties, following issues were settled:

(1) Whether the claimant was engaged for specific period when computer seminars were conducted?

(2) Whether claimant has rendered continuous services for 240 days in preceding 12 months from the date of her termination?

(3) As in terms of reference.

5. To discharge onus resting on her, the claimant entered the witness box. Miss Kamlesh Suman and Ms. Asha Bector were examined by the Corporation. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri Khairati Lal, authorized representative, advanced arguments on behalf of the claimant. Shri Umesh Gupta, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No.1

7. In affidavit Ex.WW1/A, tendered as evidence, Ms.Anna Kuddi unfolds that she was engaged by the Assistant Education Officer, Science Centre, Tilak Nagar, New Delhi, in 2005. Her services were taken by the Corporation for different works from January 2006 to October 2009 continuously without any break. Records relating to the period from 2007 to 2009 is available with her, which she produced to substantiate her engagement by the Corporation. From January 2005 to December 2006, her services were utilized for distribution of food for children in MCD Primary School, Karampura, Delhi. Since the authorities were satisfied with her sincere work, they shifted her to Science Centre, Tilak Nagar, New Delhi, as Assistant where she worked in the year 2007-2008. Certificate of merit was awarded by the authorities in her favour. Her services were utilized not only for specific work but for different nature of work. She was not allowed to perform her duties on 23.10.2009 and thereafter. During course of her cross examination, she admits that payment-cum-attendance sheets, which are Ex.WW1/1 to Ex.WW1/M27, bear her signatures.

8. Ms. Kamlesh Suman unfolds in her affidavit Ex.MW1/A that the claimant was engaged as safai karamchari at Science Centre, Tilak Nagar, New Delhi. Her engagement was for a limited period for a few seminars, conducted at Science Centre, Tilak Nagar, New Delhi. Budget allocation letters are Ex.MW1/1 to Ex.MW1/3 in that regard. Details of payments made to the claimant are there in Ex.WW1/M1 to Ex.WW1/M27.

9. Ms. Asha Bector details in affidavit Ex.MW2/A, tendered as evidence, that the claimant was engaged as

safai karamchari on daily wage basis at Science Centre, Tilak Nagar, New Delhi, where computer seminars were conducted by the Corporation. Details of her payments and attendance record are there in Ex.WW1/M1 to Ex.WW1/M27. During course of her cross examination, she unfolds that since the claimant was engaged as a daily wager, there was no occasion to enquire about her educational qualification. Claimant never rendered continuous services of 240 days in any calendar year, hence was not entitled for grant of temporary status.

10. Facts unfolded by the claimant, Ms.Kamlesh Suman and Ms.Asha Bector are appreciated in the light of documents brought over the record. Ex.MW1/1 projects that 12 days' teacher's training programme in the field of computer education was carried out at six training centres during the year 2007-08. Training programme was organized for the teachers by the Corporation in 24 batches. Total expenditure of Rs.48,69,792.00 was allocated. There was a demand of Rs.8,11,632.00 per centre for the above training programme. Ex.MW1/2 brought it over the record that in the year 2008-09, training programme for teachers was conducted in 24 batches. Total expenditure of Rs.49,61,088.00 was sanctioned. There was demand of Rs.8,26,848.00 per centre to carry out training programme. Training programme was conducted at these centres, as was done in the year 2007-2008. Ex.MW1/3 highlights that in the year 2009-2010 training programme was conducted in 12 batchers, held at six training centres. Out of facts detailed in above three documents, it came to light that the Corporation decided to impart computer education to its teachers. For training, teachers were sent in all 60 batches to six training centre. Training started on 07.04.2007 and lasted upto 22.10.2009.

11. Attendance sheet-cum-payment record in respect of the claimant has been proved as Ex. WW1/M1 to Ex. WW1/M27. Claimant does not dispute authenticity of these documents. Out of Ex. WW1/M1, it came to light that the claimant was initially engaged on 29.11.2007 and she worked for 12 days in batch No.73. She was again engaged in batch No.74 and worked for 12 days, as emerge out of Ex. WW1/M2. In the same manner, she worked for 12 days in batch No.75, which fact came over the record through Ex. WW1/M3. In batch No.76, claimant worked for 12 days as is evident out of Ex. WW1/M4. These documents bring it to the light that in the year 2007-08, claimant was engaged as sweeper to work in batch No.73, 74, 75 and 76 only. Attendance sheets-cum-payment record, which are Ex.WW1/M1 to Ex.WW1/M4, make it evident that the claimant appended her signatures on each and every date when her services were availed. Her wages were paid at daily rate basis after completion of training of each batch. Above documents make it apparent that the claimant was well aware that she was engaged for training programme which was batch-wise and on conclusion of training of a particular batch, her term of engagement came to an end.

12. Training programme for the year 2008-09 started from 15.04.2008 and came to an end on 27.03.2009. In all 24 batches, teachers took training during the aforesaid academic year. Services of the claimant were availed in batch No.85, 86, 87, 89, 90, 91, 98, 99, 100, 101, 102, 103 and 104, as emerge out of attendance sheet-cum-payment record, Ex.WW1/M5 to Ex.WW1/18. She was made to sign against attendance of each day when her services were availed. On completion of training of each batch, her payment was released. Out of the above documents, it is evident that claimant was well aware that her services were availed by the Corporation during the training programmes in a particular batch. She was not under any misconception to the effect that she was rendering services against a sanctioned post.

13. Training programme for the year 2009-2010 started on 15.04.2009 and lasted till 22.10.2009. Only 12 batches of teachers were imparted training in the academic year 2009-2010. Services of the claimant were availed in batch No.105 with effect from 17.04.2009 to 28.04.2009. She was also made to work in batch No.106. 107, 108, 109, 113, 114, 115 and 116, as emerge out of documents Ex.WW1/M19 to Ex.WW1/M27. These documents bring it over the carpet that the claimant signed each day's attendance sheet as and when her services were availed. Her wages were paid on completion of training of each batch. These facts crystallize that the claimant was well aware that her services were engaged for a specific period, as and when computer seminars were conducted.

14. Onus was there on the claimant to establish that her services were engaged against a regular post. In order to discharge onus resting on her, claimant had tendered her affidavit Ex.WW1/A, wherein bald facts are narrated. Facts unfolded by the claimant, to the effect that her services were engaged against Group D post, do not get any confirmation from any other evidence, documentary or otherwise. Contra to it, her attendance sheet-cum-payment record proved as Ex.WW1/M1 to Ex.WW1/M27 make it clear that services of the claimant were engaged in different batches, when computer training was imparted by the Corporation to its teachers in academic year 2007-2008, 2008-2009 and 2009-2010. There is absolutely no evidence to record findings to the effect that the claimant was engaged against a vacant Group D post. The Corporation has been able to being it over the record that the services of the claimant were availed for a specific purpose, as and when batches of teachers underwent computer training. The issue is, therefore, answered in favour of the Corporation and against the claimant.

Issue No. 2

15. In order to establish that she rendered continuous service of 240 days in a calendar year, the claimant presses her affidavit Ex.WW1/A in service. However, she concedes that payment-cum-attendance sheets Ex.WW1/M1 to Ex.WW1/M27 pertain to the periods for which she was engaged by the Corporation. Contra to facts unfolded by the claimant, Ms. Kamlesh Suman and Ms. Asha Bector detail that the claimant was engaged in a few batches, when computer training was imparted to its teachers by the Corporation. Witnesses brought by the Corporation conclude that the claimant did not render continuous service for 240 days in any calendar year.

16. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

17. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

18. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

19. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer'. cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose

of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa (1981 (1) LLJ 308) was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. (1986 (1) LLJ 34). Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

20. The Tribunal is saddled with a responsibility to scrutinize the records, referred above, to ascertain whether the claimant had rendered continuous services of 240 days in any calendar year. When Ex.WW1/M1 to Ex.WW1/M27 are scrutinized, it came over the record, that the claimant worked for a period of 183 days only from 22.10.2009 to 23.09.2008. She worked for a period of 131 days from 24.09.2008 to 23.08.2004.

21. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, in none of the years, she reaches notional figure of 240 days, to claim continuous service for a period of one year. Resultantly, it is obvious that the claimant has not been able to project that she rendered continuous service of 240 days to avail benefit of provisions of section 25F of the Act.

22. Though the claimant asserts that she served the Corporation since 2005 till 22.10.2009 continuously, yet she made bald assertions in that regard in her affidavit Ex.WW1/A. No document such as salary slip or wage receipt or any record or order issued by the Corporation was brought over the record to substantiate factum of continuous service of 240 days in a calendar year, not to talk of continuous service of five years, as claimed. Self-serving words, detailed by the claimant, are not sufficient to discharge burden resting on her. Burden to prove that she had rendered continuous service of 240 days in a calendar year lies on the claimant. To discharge that burden, she had to lead cogent evidence to show that she had in fact worked for 240 days in a year preceding her termination. Mere filing of affidavit or by giving her own statement was found not to be enough by the Apex Court, to prove factum that the claimant had worked with the management for 240 days, in Rajasthan Sate Ganganagar Mills Ltd. [2004 (103) FLR 192] and Essen Deinki [2003 SC (L&S) 113]. Also see Municipal Corporation, Faridabad [2004 (8) SCC 195] and Reserve Bank of India [2005 (5) SCC 100].

23. In such a situation, onus lies on the claimant to prove that she worked for 240 days in a calendar with the Corporation. To discharge that onus, apart from oral evidence, claimant had not produced any evidence to prove the fact that she had worked for 240 days in a calendar year. No proof of receipt of salary or wages or any record or order in that regard was produced to establish that she had rendered continuous service for a period of 240 days in a calendar year. The claimant opted not to examine a co-worker or to produce any document to contradict facts recorded in the attendance-cum-payment record, produced by the Corporation before the Tribunal. Therefore, it is crystal clear that the claimant has not been able to prove that she had rendered continuous service of 240 days in any calendar year, to entitle her for protection of section 25F of the Act. In view of these reasons, the issue is answered in favour of the Corporation and against the claimant.

Issue No. 3

24. Claimant asserts that by not allowing her to perform her duties on 23.10.2009, her services were retrenched by the Corporation. On the other hand, Ms. Kamlesh Suman and Ms. Asha Bector claim that the claimant was engaged in a few batches when training was imparted to its teachers by the Corporation. To substantiate their point of view, attendance-cum-payment record was proved by these witnesses. Ex.WW1/M1 to Ex.WW1/M27 could bring it over the record that the claimant was engaged for a specific propose, when training was imparted by the Corporation to its teachers. When training programme came to an end, her services were not availed of thereafter. Question for consideration would be as to whether action of the Corporation in not renewing contract of employment of the claimant would amount to retrenchment? For an answer, definition of the term 'retrenchment' is to be construed. Clause (oo) of section 2 of the Act defines terms "retrenchment". For sake of convenience, the said definition is extracted thus:

> "(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

25. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

26. Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" pre-supposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of non-renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as modus operandi to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shailendra Nath Shukla (1987 Lab. I.C. 1607), Dilip Hanumant Rao Shrike (1990 Lab. I.C. 100) and Balbir Singh [1990 (1) LLJ. 443]. On review of law laid by the Apex Court and various High Courts, a single Judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab. I.C. 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of section 2 of the Act:

"(i) that the provisions of section 2(oo)(bb) are to be construed benevolently in favour of the workman,

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2(oo)(bb),

(iii) that the provisions of section 2 (oo)(bb) are not to be interpreted in the manner which may stifle the main provision,

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as malafide and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non-applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

27. Whether provisions of retrenchment, enacted in the Act, provide for any security of tenure? Answer lies in negative. Provisions of retrenchment provide for certain benefits to a workman in case of termination of his service, falling within the ambit of definition of retrenchment. On compliance of the requirements of section 25F or 25N and 25G of the Act, it is open to the employer to retrench a workman.

28. Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in C.M. Venugopal [1994 (1) LLJ 597]. As per fact of the case, Regulation 14 of the Life Insurance Corporation of India (Staff) Regulation 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb), hence it was not retrenchment.

29. In Morinda Co-operative Sugar Mills Ltd. (1996 Lab. I.C. 221) a sugar factory used to employ certain number of workmen during crushing season and at the end to the crushing season their employment used to cease. The Supreme Court held that despite the fact that the workmen worked for more than 240 days in a year, cessation of their employment at the end of crushing season would not amount to retrenchment in view of the provisions of sub-

clause (bb) of section 2(oo) of the Act. It was observed as follows:

> "4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.
>
> 5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in sub-clause (bb) of section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated herein before and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work".

30. Above legal position was reiterated by the Apex Court in Anil Bapurao Kanase [1997 (10) S.C.C. 599] wherein it was noted as follows:

> "3. The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No.488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop. Sugar Mills Ltd. v. Ram Kishan in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing, in para 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub-clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above".

31. In Harmohinder Singh [2001 (5) S.C.C. 540] an employee was appointed as a salesman by kharga canteen on 1.6.74 and subsequently as a cashier on 9.8.75. The letter of appointment and Standing Orders, inter alia, provided that his service could be terminated by one month's notice by either party. He was served with a notice to the effect that his service would be relinquished with effect from 30.6.1989. Relying precedent in Uptron India Ltd. [1998 (6) S.C.C. 538] the Apex Court ruled that contract of service for a fixed term are excluded from the ambit of retrenchment. Decision in Balbir Singh (supra) was held to be erroneous. It was also ruled that principles of natural justice are not applicable where termination takes place on expiry of contract of service.

32. In Batala Coop. Sugar Mills Ltd. [2005 (8) S.C.C. 481] an employee was engaged on casual basis on daily wages for specific work and for a specific period. He was engaged on 1.4.1986 and worked upto 12.2.94. The Labour Court concluded that termination of his services was violative of provisions of section 25-F of the Act, hence ordered for his reinstatement with 50% back wages. Relying precedents in Morinda Coop. Sugar Mills (supra) and Anil Bapurao Kanase (supra) the Apex Court ruled that since his engagement was for a specific period and specific work, relief granted to him by the Labour Court can not be maintained.

33. The Apex Court dealt with such a situation again in Darbara Singh (2006 LLR 68) wherein an employee was appointed by the Punjab State Electricity Board as peon on daily wage basis from 8.1.88 to 29.2.88. His services were extend from time to time and finally dispensed with in June 1989. The Supreme Court ruled that engagement of Darbara Singh was for a specific period and conditional. His termination did not amount to retrenchment. His case was found to be covered under exception contained in sub-clause (bb) of section 2(oo) of the Act. In Kishore Chand Samal (2006 LLR 65), same view was maintained by the Apex Court. It was ruled therein that the precedent in S.M. Nilajkar [2003 (II) LLJ 359] has no application to the controversy since it was ruled therein that mere mention about the engagement being temporary without indication of any period attracts section 25 F of the Act, if it is proved that the concerned workman had worked continuously for more than 240 days. Case of Darbara Singh and Kishan Chand Samal were found to be relating to fixed term of appointment.

34. In BSES Yamuna Power Ltd. (2006 LLR 1144) Rakesh Kumar was appointed as Copyist on 29.9.89, initially for a period of three months as a daily wager. His term of appointment was extended up to 20.9.90. No further extension was given and his services were dispensed with on 20.9.90. On consideration of facts and law High Court of Delhi has observed thus:

> "…In the present case, the respondent was appointed as a copyist for totaling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months. It was extended from time to time and no extension was given after 20th September, 1990. He was appointed without any regular process of appointment, purely casual and on temporary basis for specific work of totaling of ledger. When this work was over, no extension was given. I consider that appointment as that of the respondent is squarely covered under section 2(oo)(bb) of the Act. Giving of non extension did not amount to termination of service, it was not a case of retrenchment".

35. Precedents, handed down by Allahabad High Court in Shailendra Nath Shukla (supra), Bombay High Court in Dilip Hanumantrao Shirke (supra), Punjab & Haryana High Court in Balbir Singh (supra) and Madhya Pradesh High Court in Madhya Pradesh Bank Karamchari Sangh (supra) castrate sub-clause (bb) of section 2(oo) of the Act. Ratio decidendi in these precedents abrogates statutory provisions of sub-clause (bb) of section 2 (oo) of the Act without even discussing the legality or constitutional validity of the clause. On the other hand the Apex Court in C.M. Venugopal (supra), Morinda Co-operative Sugar Mills Ltd. (supra), Anil Bapurao Kanase (supra), Harmohinder Singh (supra), Batala Coop. Sugar Mills Ltd. (supra), Darbara Singh (supra) and Kishore Chand Samal (supra) and High Court of Delhi in BSES Yamuna Power Ltd. (supra) spoke that case of an employee, appointed for a specific period which was extended from time to time, would be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in case his services are dispensed with as a result of non-renewal of the contract of employment between him and his employer, on its expiry or termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The law, so laid, holds the water and would be applied to the case of the claimant.

36. Now, turning to facts, the claimant was engaged in a few bathes when raining was imparted to teachers by the Corporation. Her engagement for a specific period to come to an end as and when training programme of a particular batch stood concluded. She was engaged again when next batch of teachers underwent training and so on. Thus it is emerging over the record that the claimant was engaged afresh as and when batch of teachers underwent computer training. Her engagement was not continuous. When training of last batch came to an end, computer education training programme stood concluded on 22.10.2009. Therefore, there was no occasion for the Corporation to avail her services. Thus, services of the claimant came to an end and her non-engagement by the Corporation does not amount to retrenchment. The case is covered by exception provided by sub-clause (bb) of clause (oo) of section 2 of the Act. Thus, it is evident that provisions of section 25F of the Act does not come into play.

37. During the course of his arguments, claimant places reliance on the precedent in S.M. Nilajkar (supra) wherein termination of service of workman engaged in a scheme or project was held not to amount to retrenchment within the meaning of clause (oo) of section 2 of the Act, subject to following conditions being specified:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

38. When facts of the present controversy were scanned, as detailed above, it came to light that the claimant was engaged for a specific period as and when a particular batch of teachers was called for computer training by the Corporation. Her contract of employment began when training of a particular batch started and came to an end when training programme of that batch concluded. She was well aware that her services were availed of during training programme of a particular batch of teachers. It was well within her knowledge that her engagement would come to an end simultaneously with the conclusion of the training programme. Resultantly, it is evident that all ingredients laid down by the Apex Court in S.M. Nilajkar (supra) stood satisfied. Claimant cannot question applicability of sub clause (bb) of clause (oo) of Section 2 of the Act to the present controversy.

39. Since non-engagement of the claimant does not amount to retrenchment, the Corporation was not under an obligation to comply with the provisions of section 25F of the Act. Action of the Corporation in not engaging services of the claimant with effect from 23.10.2009 is found to be just, fair and legal. Claimant is not entitled to any relief, muchless the relief of reinstatement in service with continuity and full back wages. Her claim statement is liable to be brushed aside. Accordingly, her claim statement is discarded. An award is passed in favour of the Corporation and against the claimant. It be sent to the appropriate Government for publication.

Dated: 21.01.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 27 जनवरी, 2014

का.आ. 589.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रोजेक्ट डायरेक्टर, सोम इसोलुक न ह ओन टोल्वे प्राइवेट लिमिटेड, गुड़गांव के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 14/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-01-2014 को प्राप्त हुआ था ।

[सं. एल-42012/13/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th January, 2014

S.O. 589.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 14/2013) of the Central Government Industrial Tribunal/Labour Court No. 1, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Project Director, Soma Isolux NH One Tollway Pvt. Ltd., Gurgaon and their workman, which was received by the Central Government on 23.01.2014.

[No. L-42012/13/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-1, CHANDIGARH

Case No I.D. 14/2013

Sh. Jitender, S/o Late Sh. Ved Singh,
P.O. & Tehsil Gangana , Sonepat ...Applicant

Versus

The Project Director, Soma Isolux
NH One Tollway Pvt. Ltd. 2nd Floor,
Block-2, Vatika Business Park,
Sector-49, Gurgaon-122101 ...Respondents

APPEARANCES :

For the workman : None
For the management : Shri S.B.Tiwari.

AWARD

Passed on: 16.01.2014

Central Govt. vide notification No. L-42012/13/2013-IR (DU) dated 10th April, 2013 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s Isolux, JH One Tollway Pvt. Ltd. in termination the services of Shri Jitender S/o Late Shri Ved Singh, Ex-PO w.e.f. 24.11.2011is justified or not ? If not, what relief will be given to the workman and from which date?"

2. Notices were issued to the parties for filling the claim statement. Despite repeated adjournment for filling the claim statement the workman did not file the claim statement. The representative of the management Sh. S.B.Tiwari appeared and filed written comments stating therein that workman has already been paid his dues outstanding with the company vide State Bank of India demand draft no. 761915 dated 17.2.12 and no claim is left with the company. Besides this, the management also placed on record receipt –cum-no claim undertaking signed by the workman Jitender.

3. In the facts and circumstances of the case particularly when the workman has not filed any claim statement the workman is not entitled to any relief. Therefore, the action of the management of M/s Isolux, JH One Tollway Pvt. Ltd. in terminating the services of Shri Jitender S/o Late Shri Ved Singh, Ex-PO w.e.f. 24.11.2011 is justified .

4. The reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for further necessary action.

Chandigarh
16.01.2014

S.P. SINGH, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 590.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गुडगांवा ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचाट (संदर्भ संख्या 7/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-01-2014 को प्राप्त हुआ था ।

[सं. एल-12012/104/2002-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 590.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh now as shown in the Annexure, in the industrial dispute between the management of Gurgaon Gramin Bank and their workman, received by the Central Government on 29.01.2014.

[No. L-12012/104/2002-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 7 of 2010

Reference No. L-12012/104/2002/IR(B-I) dated 15.06.2010

Kanhiya Lal, S/o Sh. Bhopal Singh,
Vill. Panhara Kalan, Fatehpur Billoch,
Tehsil-Ballabgarh, Distt. Faridabad ...Applicant

Versus

1. The Chairman, Gurgaon
Gramin Bank, Head Office,
2069, Sector-4, Gurgaon ...Respondent

Appearances :

For the Workman : Shri Rohit Ahuja, Advocate

For the Management : None

AWARD

Passed on:- 17-01-2014

Central Govt. vide notification No. L-12012/104/2002-IR(B-I)dated 15.06.2010 has referred the following dispute to this Tribunal for adjudication**:**

Term of Reference :

"Whether the action of the management of Gurgaon Gramin Bank in terminating the services of Shri Kanhiya Lal S/o Shri Bhopal Singh w.e.f. 26.09.2000 is legal and justified? If not, what relief he is entitled to?"

2. As per the claim statement, the reference received from the Ministry was registered at I.D. No.7/2010 and notices were issued.

3. Workman filed his claim statement stating that he was appointed by the management as Messenger-cum-peon through respondent No.2 at branch office of respondent No. 1 w.e.f. 02.01.2000 and the last drawn salary of the claimant was Rs.2028 per month. The work and conduct of the claimant during the course of his employment remained unblemished and the entire satisfaction of the superiors being a regular and confirmed employee appointed against vacant post.

4. On 26.09.2000, workman was stopped to resume his duty saying that the services of the workman had been terminated and his services were no more required. Neither any termination letter was issued to the workman nor any reason was disclosed. The termination of the workman is illegal, against the principles of natural justice and in utter violation of provisions of Section 25F of I.D. Act. Workman was working against a permanent post and nature of his job is permanent which is still in existence and the management has been engaging other person from time to time which amounts to unfair labour practice. After termination of services of the workman by the management, management appointed Sh. Jagat Singh in place of Kanhiya Lal (workman) on the same terms and conditions. The management might have changed the name of workman in the records in view of its unfair labour practice. Workman had not been given any appointment letter. Workman was performing his duty from 10am to 5pm every day. After the termination of the services of the workman, the management notified and circulated 46 vacancies for the post of messenger-cum-sweeper vide circulars dated 05.02.2007 and 06.02.2007 and it was also incorporated that the persons who worked earlier in the bank may apply for the above post if fulfill eligibility. The workman also applied and got it forwarded through the Area Manager on 26.02.2007, but the workman was not called for interview. Workman since the date of termination till today is unemployed and depending on his wife and other relatives. Workman's wife is agricultural labourer. Workman is entitled to reinstated with full back wages and continuity of service and all other benefits. Workman filed his affidavit and other annexures i.e circular letter dated 05.02.2007, 06.02.2007 and photocopy of application form.

5. The management filed reply to the claim statement. In reply, management submitted that the workman has no cause of action to invoke the jurisdiction of the tribunal. Workman was never appointed in the service of the management bank. Workman has concealed the relevant and material facts. Workman had also lodged a demand notice dated 15.01.2001 with the labour officer-cum-conciliation officer, Faridabad circle. Workman withdrew his demand notice vide his letter dated 06.02.2001 wherein workman himself admitted that he had filed a case for getting regularized in the service implying thereby that he was not on the regular roll of the bank as claimed by him. The bank circular no.24/PD/2007/06 dated 05.02.2007 shows that there was ban on fresh recruitment by Govt. of India and the respondent bank could not make fresh recruitment since 1992. Workman's statement that he was appointed by the respondent no. 1 w.e.f. 02.01.2000 falls flat as there was complete ban on fresh recruitment since 1992. Hon'ble Supreme Court of India in Secretary, State of Karnataka and others Vs. Umadevi & others has ruled that unless the employment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. The bench has ruled that merely because a temporary employee is continued for time beyond the terms of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made in terms of the relevant rules. Management also alleged in his written reply that workman Kanhiya Lal was engaged by branch offices at Mohna as casual basis @ 78

for full day and Rs. 39 for half day at intermittent intervals as per the requirement from 14.03.2000 to 16.09.2000 and not from 02.01.2000 to 26.01.2000 as claimed by workman. Workman has not completed 240 days in any calendar year and as such there is no violation of provisions of I.D. Act. Workman had also filed a Civil Writ Petition No. 3842/ 2004 in the Hon'ble High Court at Chandigarh. Respondent no 2 had no power to give appointment to any person including the workman. The workman was never appointed in the services of the bank and was only engaged as a casual worker. Workman vide his letter dated 12.03.2001 served a demand notice through the Assistant Labour Commissioner, Faridabad. But the conciliation proceedings ended in failure. Management also mentioned in his reply that the Ministry of Labour vide letter no.L12012/104/2002 IR(B-I) dated 08.12.2002 addressed to the workman and the management bank informed that the dispute is not fit for adjudication for the reasons that the workman has not completed 240 days of the services in a calendar year and does not attract the provisions of Section 25F of the I.D. Act. Workman has no right to claim regular appointment. Management also submitted in his reply that the workman was engaged only as a casual workman from time to time. Management also submitted in his reply that the claim statement of the workman is devoid of any merit and deserve to be dismissed.

6. Workman was represented by Shri Rohit Ahuja Advocate, but none appeared for management from last many dates. So far oral evidence is concerned no witness was examined on behalf of the workman. Workman Kanhiya Lal filed his affidavit, duly certified by Oath Commissioner. Workman also filed circular letter of the management bank, application form. Besides this, management along with his written reply, filed photocopies of demand notice from Kanhiya Lal, photocopy of attendance register. Rejection letter of Kanhiya Lal. Workman also filed photocopies of personnel department circular along with the workman's affidavit.

7. Management filed affidavit of Shri Inderjit working as Chairman, Gurgaon Gramin Bank. Although this document has been titled as affidavit but it is pertinent to mention that this so called affidavit has not been attested or verified by the Oath Commissioner or Notary.

8. Workman has claimed in his claim statement that he was appointed on 02.01.2000 and his services were terminated on 26.09.2000. Management has refuted this fact by stating that the workman was appointed as casual labour on daily wages from 14.03.2000 to 16.09.2000, but as stated above, management has not substantiated its plea by any duly attested or verified affidavit. It appears that the workman worked from 02.01.2000 upto 26.09.2000. The workman was not appointed as per rules framed for recruitment. Neither any appointment letter was issued to the workman nor any termination letter was issued. Vacancies were advertised, workman also applied but his application form was rejected as the workman was not found eligible.

9. Now even if the workman's plea that the workman has completed 240 days in a year is taken to be unrefuted, even then, workman has not been in employment of the management for one year. Section 25F of the Industrial Dispute Act, 1947 envisaged that the Section 25F conditions precedent to retrenchment of workman- "No workman employed in any industry who has been in continuous service for not less than one year under an employee shall be retrenched by that employer until

a. the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

b. the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen day's average pay [for every completed year of continuous service] or any part thereof in excess of six months."

10. As the workman was in employment for less than one year, Section 25F of ID Act does not attract, and the provisions of this section are not applicable. Mere completion of 240 days of continuous service in a year cannot, by itself, form the basis for directing regularization of service of workman as has been held in (Management of Divisional Engineer Telecommunication, Mahaboobnagar Vs. Venkataiah, 2007 (112) FLR 24.

11. In view of the above facts and circumstances of the case, workman is not entitled to any relief.

12. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for further necessary action.

Chandigarh
17-01-2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 591.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 20/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था ।

[सं. एल-41011/68/2008-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 591.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure, in the industrial dispute between the management of Uttar Railway, Uttar Railway Loco Running Shed and their workmen, received by the Central Government on 29.01.2014.

[No. L-41011/68/2008-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 20/2009

Ref. No. L-41011/68/2008-IR(B-I) dated 24.06.2009

Mandal Sanghatan Mantri,
Uttar Railway Karmachari Union
283/63KH(B) Ghari Kanora, Premvati Nagar
P.O. Manak Nagar,
Lucknow

AND

1. The Sr. DME (O&F)
   Uttar Railway, Lucknow
2. Sr. Section Engineer (Loco)
   Uttar Railway Loco Running Shed
   Alambagh, Lucknow

AWARD

1. By order No. L-41011/68/2008-IR(B-I) dated 24.06.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sanghatan Mantri, Uttar Railway Karmachari Union, 283/63KH(B) Ghari Kanora, Premvati Nagar, PO Manak Nagar, Lucknow and the Sr.DME(O&F) Uttar Railway, Lucknow and the Sr. Section Engineer, Uttar Railway Loco Running Shed, Alambagh Lucknow for adjudication.

2. The reference under adjudication is:

"Whether the action of the management of Uttar Railway, Lucknow in transferring Sri Saidur Rehman, Cleaner/Locoshed, from Lucknow to Varanasi during the pendency of another industrial dispute before the conciliation Officer caused to violation of the provisions of I.D. Act, 1947, is fair and justified? If not, to what relief is the applicant concerned entitled?"

3. The order of reference was endorsed to the Mandal Sanghatan Mantri Uttar Railway, Lucknow with the direction to the party raising the dispute to filed the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957

4. In brief of the case that workman Saidur Rahman who engaged in Railway as Casual Labour and he was retrenched. The workman raised industrial dispute and got an award in his favour on 24.04.87. The railway Administration preferred a writ petition no. 17910/87 before Hon'ble High Court, Allahabad. Hon'ble High Court passed an Interim order directing the Railway to re-engage to the workman. Sri Aaidur Rehman, Cleaner transferred to Lucknow to Varanasi. Against this order workman filed appeal before Regional Labour Commissioner ©, Lucknow vide letter No. LKO-8(1-47)/2001(All File)/LKO-8(1-85)/ 2008 dated 28.8.2008 which is pending before Govt. of India, Ministry of Labour, New Delhi.

5. The workman union stated that on 5.8.2008 workman transferred to Varanasi and change his post as Box Porter. Union alleged that it is violation of I.D. Act.1947 33(2)(B) and also I.D.Act.1947 25(T) and 33(A) under unfair labour practice so he punishable under 25(U), 33(i) and 34.

6. The workman union alleged that no post of Box Porter available at Varanasi.

7. The written statement filed by the Railway stating therein that Hon'ble High Court passed as interim order directing the Railway to Re-engage to the workman. In compliance of High Court order the workman was re-engage on 22.4.88. Mr. Saidur Rahaman posted as box porter by the railway administration on the basis of screening committee report. On the basis of Screening Committee Report and also in compliance of the award passed by this Tribunal found workman fit for the post of Box Porter as such he was transferred from Lucknow to Varanasi on the post of Box Porter. It is also stated that workman is in the habit of filing false claims to pressurize to Railway again and again on the same issue. It is pertinent to mention that workman always indulged in the court proceeding and always disturbed the industrial harmony by his wrong act and omissions it is not out of place to mention that the I. D Case No. 78/;2000, 96/2003. 23/2003. 14/2003,9 20/2009 were raised by the workman before the Tribunal. ID No.78/2000 was decided against the workman but he has not filed any appeal against the award, hence binding upon the workman. Railway administration have not violated by any provision of the I.D. Act. So there is no question of prosecution.

8. Rejoinder has been fined by the workman herein no new plea was taken. Evidence on affidavit have been

filed by both the parties workman witness was cross examined and the case was fixed for cross examination of management witness.

9. At this stage, applicant moved an application W-15 to the effect that the instant I.D. is against the transfer order No. C22E 11-5/98 S Rahman dt 5.8.2008. Against the aforesaid transfer order a writ no. 796(SB) 2009 is pending before Hon'ble High Court hence the workman does not want to persue the case.

10. Under the circumstances no relief is required to be given to the workman concerned. The reference under adjudication is answered as NO CLAIM AWARD accordingly.

11. Award as above.

LUCKNOW
19.12.2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 592.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचाट (संदर्भ संख्या 31/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था ।

[सं. एल-41011/57/2011-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 592.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Northen Railway, Ferozpur Cantt., Northern Railway and their workman, received by the Central Government on 29.01.2014.

[No. L-41011/57/2011-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 31 of 2011

Reference No. L-41011/57/2011/IR(B-I) dated 10.02.2012

Sh. Ramesh Kumar S/o Sh. Ram Ji Lal
C/o General Secretary, Northern Railway Workers Union, 49/69, Harpal Nagar, Ludhiana ...Applicant

Versus

1. Divisional Railway Manager, Northern Railway, Ferozepur Cantt.
2. Section Engineer, Northern Railway, Moga ...Respondents

Appearances :

For the Workman : None

For the Management : Shri N.K Zakhmi, Advocate

AWARD

Passed on:-07-01-2014

Central Govt. vide notification No.L-41011/57/2011/IR(B-I)dated 10.02.2011 has referred the following dispute to this Tribunal for adjudication**:**

Term of Reference:

"Whether the demand of the Union, Northern Railway Worker's Union, Ludhiana, for treating the period of services of Sh. Ramesh Kumar from 7-03-2007 to 12-06-2007 as duty and payment of full salary for the said period with consequential benefits and 18% percent interest is legal and justified? To what relief the union is entitled?"

2. Today the case was fixed for arguments as none is appearing on behalf of the Union to pursue the reference. Earlier Shri B.N Sehgal Advocate was appearing on behalf of the workman and filed the claim statement and management also placed on record the written statement.

3. The brief facts of the case as per Union is, that one Ramesh Kumar joined the management in the year 1978 and while performing duty as a Gateman. Senior Section Engineer directed him not to perform duty vide order dated 07.03.2007 on the allegations that Shri Ramesh Kumar refused to join inquiry. As per Union the fact was that Ramesh Kumar had only requested that he be given order in writing. Senior Section Engineer gave a letter to Ramesh Kumar, but duty was not given to Ramesh Kumar and the Senior Section Engineer refused him to allow duty despite the representation dated 10.04.2007 and legal notice 24.04.2007. Ramesh Kumar filed a case in the CAT, Chandigarh, and Senior Section Engineer allowed him duty on 13.06.2007. Senior Section Engineer passed the order dated 03.07.2007 which according to the workman is illegal, null and void as Ramesh Kumar had not absented from duty and he was only allowed duty on 13.06.2007. The order dated 07.03.2007 is against the rules and principles of natural justice as Senior Section Engineers is not the appointing authority of Shri Ramesh Kumar. As per the workman, he is entitled to full salary and allowances for the period 07.03.2007 to 12.06.2007 and the said period

may be treated on duty. It is further pleaded that earlier the workman filed a labour claim application in this Tribunal and he withdrawn the same on 08.03.2010 with a liberty to raise the dispute before appropriate forum. It is prayed by the workman that he is entitled for salary from 07.03.2007 to 12.06.2007 along with interest @ 18% per annum for the period of 07.03.2007 to 12.06.2007.

4. The management filed the written statement. Preliminary objection has been taken that there was a complaint received by the office of the management against Ramesh Kumar, which was sent to SSE/W Kotkapura for conducting inquiry into complaint. Vide order dated 02.03.2007, SSE/W asked Ramesh Kumar to attend the inquiry proceeding, but Ramesh Kumar did not turn up. Vide letter dated 05.03.2007, Sh. Shinderpal Singh delivered railway pass to Ramesh Kumar, but Ramesh Kumar returned the same. The management vide order dated 09.04.2007 asked Mr. Ramesh Kumar to explain as to why he did not appear before the inquiry officer. But despite that Ramesh Kumar did not turn up. He attended office only on 12.06.2007. Ramesh Kumar unnecessarily indulge in correspondence and never came personally to attend his duty. Therefore, the workman is not entitled to any claim whatsoever as he remained absent their duty unauthorizedly for the period from 07.03.2007 to 12.06.2007 and there is no order to treat him in duty for the period in question.

5. As no evidence has been adduced nor any affidavit has been filed on behalf of the workman to corroborate or to substantiate his claim as mentioned in the claim statement. Therefore, Ramesh Kumar by his assertion in claim statement which has been totally denied by the management in their written statement cannot be taken as true. Therefore, Ramesh Kumar cannot be held to be entitled the pay as demanded by the Union in his claim statement. He cannot be held to be entitled only on the basis of the claim statement particularly when Ramesh Kumar failed to appear and to file any evidence in the case. Therefore, in the facts and circumstances of the case, the demand of the Union Northern Railway Worker's Union, Ludhiana, for treating the period of service of Shri Ramesh Kumar as duty and payment of full salary for the said period with consequential benefits and 18% interest is not legal and the same is not justified.

6. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for further necessary action.

Chandigarh
6.01.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 593.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एंड जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 20/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था ।

[सं. एल-12012/60/2010-आईआर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of Bikaner and Jaipur and their workmen, received by the Central Government on 29.01.2014.

[No. L-12012/60/2010-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 19th day of July, 2013

INDUSTRIAL DISPUTE No. I.D.20/2011

Between :

Sri Abdul Aziz,
S/o A.K. Zillani,
D.No.26-1-21/1, Bowdara Road,
Visakhapatnam – 530 001. ...Petitioner

AND

1. The Regional Manager,
   State Bank of Bikaner & Jaipur,
   Tilak Marg, H.O.,
   Jaipur (Rajasthan) – 303005

2. The Branch Manager,
   State Bank of Bikaner & Jaipur,
   D.No.12-1-22, Kannayyapeta,
   Near Hotel Green Park,
   Visakhapatnam – 530 002 ...Respondents

Appearances :

For the Petitioner : M/s. D. Vilas, D. Sampath & V. Vinod, Advocates

For the Respondent : M/s. P. Viswajanani, K. Santosh & K. Surya Sree, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/60/2010-IR(DU) dated 15.4.2011 referred the following dispute between the management of State Bank of Bikaner and Jaipur and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action of the management of State Bank of Bikaner and Jaipur, Visakhapatnam in terminating the services of Shri Abdul Aziz S/o Sri A.K. Zilani, Ex-Watchman-cum-Peon w.e.f. 23.6.2009, is legal and justified? To what relief the workman is entitled?"

2. The case stands posted for filing of claim statement and documents. Petitioner called absent and there is no representation since long time. Inspite of giving fair opportunity, claim statement was not filed by the Petitioner and the matter is coming up since the year 2011. In the circumstances, taking that Petitioner is not interested in the proceedings, petition is dismissed

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 29 जनवरी, 2014

का.आ. 594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 76/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था ।

[सं. एल-12012/114/2008-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workman, received by the Central Government on 29.01.2014.

[No. L-12012/114/2008-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 76/2008

Date of Passing Award – 18th February, 2013

Between :

The Asst. General Manager,
State Bank of India,
Bapujinagar Branch,
Dist. Khurda, Orissa,
Bhubaneswar, (Orissa) ...1st Party-Management

(And)

Their workman Sri Manas Chandra Das,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar (Orissa) ...2nd Party-Workman

Appearances:

Shri Alok Das, Authorized Representative	...	For the 1st Party-Management
None.	...	For the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/114/2008 – IR(B-I), dated 10.10.2008 to this Tribunal for adjudication to the following effect:

"Whether the action of the management of State Bank of India, Bhubaneswar Main Branch in terminating the services of Sri Manas Chandra Das, ex-workman w.e.f. 30.9.2004 is, fair, legal and justified? To what relief is the workman concerned entitled"?

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger in July, 1990 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous

satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30.9.2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 29.10.2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30.9.2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 28 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank in July, 1990 and he was discontinued from service on 30.9.2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1993. But he was not found successful hence could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15.5.1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC - 3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Das had allegedly been terminated in February, 1992 his claim has become stale by raising the dispute after fifteen years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:-

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?
2. Whether the workman proves that he has worked for more than 240 days as enumerated under section 25-F of the Industrial Disputes Act?
3. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch in terminating services of Shri Manas Chandra Das ex-workman with effect from 30.9.2004 is fair, legal and justified?
4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO. 1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case—

> Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 28 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service in July, 1990 and worked till 30.9.2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Abhay Kumar Das in his statement before the Court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies..... He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30.9.2004, but has stated that "In fact the workman left working in the Branch since February, 1992.". The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Bhubaneswar Main Branch in terminating the services of Sri Manas Chandra Das with effect from 30.9.2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 297/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-1-2014 को प्राप्त हुआ था ।

[सं. एल-12012/194/2000-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 297/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India, Region-V, Zonal Office and their workmen, received by the Central Government on 29.01.2014.

[No. L-12012/194/2000-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/297/2000

Date: 15.07.2013

Party No.1 : Shri Prakash Dhakate,
Near Balaji Mandir, Babupeth,
Ward No.1, Chandrapur, Tah. &
Distt. Chandrapur (MS).

Party No.2 : The Asstt. General Manager,
State Bank of India, Region-II,
Zonal Office, S.V. Patel Marg,
PO Box No. 37, Nagpur- 440001.

AWARD

(Dated: 15th July, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of State Bank of India and their workman, Shri Prakash Dhakate, for adjudication, as per letter No.L-12012/194/2000-IR (B-I) dated 27.09.2000, with the following schedule:-

> "Whether the action of the management of State Bank of India, Region-II, Zonal Office, Nagpur, terminating Shri Prakash Gangadhar Dhakate, Ex-Peon, State Bank of India, Br. Industrial Estate, Chandrapur is justified? If not, what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Prakash Dhakate, ('the workman" in short), filed the statement of claim and the management of State Bank of India, ("Party No. 1" in short) filed their written statement.

The case of the workman as projected in the statement of claim is that he was appointed on 10.02.1996 in the Industrial Estate Branch, Chandrapur of party no.1 as per the provisions of the Regulations meant for appointment of sub-staff and he worked on the post of peon and messenger honestly and to the entire satisfaction of the employer till 05.04.1997 and he completed 240 days of continuous service and was a protected employee and his services were governed by the provisions of bipartite settlements, Standing Order, Sastry Award and such other provisions of law and on 31.03.1997, a telegram was received by the Industrial Estate branch, Chandrapur about expiry of the panel of temporary employees on 31.03.1997 and thereafter, his services were terminated orally at the closure of the business hours on 05.04.1997 and before termination of his services, neither any notice nor any letter of termination was served on him and he had worked for 328 days from February, 1996 to April, 1997 and he had worked for 263 days from May, 1996 to April, 1997 and by virtue of working for more than 240 days continuously, he had acquired the status of a permanent employee.

The further case of the workman is that before termination of his services, the mandatory provisions of section 25-F of the Act were not complied with by party no.1 and he was not paid either the pay in lieu of the notice or the retrenchment compensation and as such, his termination prima-facie is illegal, arbitrary, unwarranted and without any genuine reason and after his illegal termination, the party no.1 at first appointed Shri Rebhankar and thereafter appointed Shri Kulkarni and when he raised objection to such appointments, both of them were removed by party no.1 and the wages paid to them were shown as expenses towards hamali and such other miscellaneous expenses and such conduct of party no.1 clearly shows that work was and is available for him in the said branch and the work performed by him is not only regular, but also, perennial in nature and his appointment as per letter by party no.1 was out of necessity and exigency of work and as party no.1 did not follow the

principles of natural justice, before termination of his services, there was miscarriage of justice and party no.1 acted in utter disregard of the provisions as Sastry Award and on that count also, the order of termination is illegal and is liable to be quashed.

It is further pleaded by the workman that he issued a notice to party no.1 through his advocate on 17.04.1997 and party no.1 in its reply dated 06.05.1997 wrongly mentioned about his receiving retrenchment compensation, through infact, he did not receive any compensation and due to his illegal termination, he was thrown to the street and he became ineligible to get any fresh job or service due to age bar for new appointment and he is a member of schedule tribe community and his appointment was as a backward candidate to fill up the back log and his termination was against the guidelines and instructions issued by the Government from time to time and on this count also, his termination is illegal and is liable to be quashed.

The workman has prayed to quash and set aside the order of his termination dated 06.04.1997 and reinstate him in service with continuity and full back wages.

3. The party no.1 in the written statement has pleaded inter-alia that the workman was engaged in purely temporary capacity on daily wages basis intermittently without continuity, for doing sundry work i.e. cleaning of branch premises, hamali work, arrangement of record and stationary etc. at the Industrial Estate branch, Chandrapur, due to administrative exigencies and sometime he worked for full day and sometime for part of the day and the termination of the workman was done due to its policy decision and it had entered into settlements with the recognized union of the bank, which had taken up the cause of all such temporary employees, on 17.11.87, which was modified/clarified vide settlements dated 16.07.1988, 27.10.1988, 09.01.1991 and 13.07.1996 and in terms of the said settlements, it was agreed that temporary employees and casual labourers would be given one time opportunity to be absorbed, under certain norms and for that purpose, panels would be prepared for filling up the vacancies as per the norms agreed upon, under those settlements and the panel for absorption would be kept alive upto 31.03.1997, after which, the same would be lapsed and the said settlements are settlements within the meaning of section 2 (p) and section 18 (1) of the Act read with Rule 58 of the Industrial Dispute (Central) Rules, 1957 ("the Rules" in short) and are binding on the parties and in response to the said settlement, it (bank) gave an advertisement in the newspapers calling upon all the eligible temporary employees to apply for permanent appointment in the sub-ordinate cadre subject to certain norms as contained in the settlement and the panel prepared in pursuance to the settlement, stood lapsed on 31.03.1997 in accordance with the terms of settlement and therefore, after 31.03.1997, no temporary employee could be engaged by it and the entire temporary employees in the waiting list had to be disengaged from 01.04.1997 and clause 10 of the settlement dated 17.11.1987 inter-alia states that hence forth, there will be no temporary appointments in the subordinate cadre, except for the post of sweeper and watchman and the Government of India, Ministry of Finance, Dept. of Economic Affairs/Banking Division vide letter no. 16.08.1990 directed to stop temporary appointment and in such situations, if it allows such temporary employees, then it would be violation of said settlement attracting penal provisions against the bank under section 29 of the Act and violation of the Government of India directions.

The further case of party no.1 is that the workman was engaged purely by the branch on temporary basis, intermittently, whenever there were exigencies of work and there is no post of Peon in the Bank and the workman was not a protected workman as defined in the Act and the appointment of the workman was never as per the provisions of the Regulations meant for sub-staff and the workman did not work for 240 days in the 12 months preceding the date of termination and as the services of the workman were not needed and there were no exigencies of services, the workman was disengaged, hence there was no question of giving any letter or notice before his disengagement and there was no question of payment of retrenchment compensation or pay in lieu of notice to the workman and the workman was discontinued due to lapse of the settlement and suitable reply was given by it to the notice given by the workman and the workman is not entitled to any relief.

4. At this juncture, it is necessary to mention that on 18.07.2002, award had been passed by the Tribunal directing payment of compensation to the workman as provided under section 25-F of the Act. Being aggrieved by the award, the workman had approached the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur in writ petition no. 4374 of 2002 for redress. The Hon'ble High Court by order dated 26.09.2012 were pleased to quash and set aside the award dated 18.07.2002 and to remand the reference for disposal afresh in accordance with law.

5. After remand of the reference, the workman made amendment of the statement of claim and pleaded further that he was appointed by the Branch Manager of Chandrapur Branch of SBI w.e.f. 16.04.2003 and he worked till 02.08.2003 and his appointment was made after obtaining of his medical examination report and also his character report from the Suptd. of Police, Chandrapur and such fact shows that the branch manager is competent and empowered to appoint him and the work performed by him is of permanent and regular in nature and thus his termination from services w.e.f. 06.04.1997 was illegal and in breach of the provisions of sections 25-F and 25-G of

the Act and Rule 81 of the Rules, as no seniority list was prepared and published before his termination and right from the date of termination i.e. 06.04.1997 to 16.04.1997 and from 03.08.2003, he was and is out of job and not in gainful employment and as such, he is entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

6. Such pleadings of the workman in the statement of claim by way of amendment has been denied by the party no.1 in the written statement by making necessary amendment.

7. In order to substantiate his claim, the workman has examined himself as a witness, besides placing reliance on documentary evidence. No evidence has been adduced on behalf of the party no.1.

8. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has admitted that the bank had not given any advertisement before his appointment and his name was not sponsored by the employment exchange and he was called by the Manager and there was no written examination and he was also not medically examined. The workman in the cross-examination has further admitted that he had not submitted any application for his service and no written appointment order was given to him and he was being called for duty as and when required and he did not work on any Sunday and on the basis of the work being done by him, he was being paid Rs. 25 at times and sometimes at the rate of Rs. 20.

The workman has further admitted that on 10.02.1996, he was engaged by the bank temporally and in the document, Ext. W-II, it has been clearly mentioned that his appointment was for a period of 90 days and after working for a period of 90 days, his services were terminated by the Bank again, after payment of retrenchment compensation and he did not raise any industrial dispute for his retrenchment in the year 2003. The workman has also admitted that he uses to work as a daily wage earner, as and when he uses to get work.

9. At the time of argument, it was submitted by the learned advocate for the workman that it is clear from the evidence adduced by the workman that he had worked for more than 240 days in the preceding 12 calendar months of the date of termination and the party no.1 in their reply submitted in writ petition no. 1737/97 before the Hon'ble High Court have admitted that the workman had worked for 275 days from February, 1996 to March, 1997 and this fact was considered by the Tribunal in the earlier award dated 18.07.2002 and thus, the workman has proved that he is entitled for reinstatement in service with continuity and full back wages. It was further submitted that the Branch Manager is empowered to appoint an employee and the same has been sufficiently proved by the document, Ext. W-II. It was further submitted by the learned advocate for the workman that the plea taken by the party no.1 that the services of the workman were terminated due to the terms of the settlements reached between the bank and the recognized union of the bank and expiry of the panel of temporary employees on 31.03.1997 cannot be sustained, as such settlements are not binding on the workman and the same also cannot override the provisions of sections 25-F and section 25-G of the Act and Rule-81 of the Rules and any union is not entitled to execute any settlement in respect of the termination of the services of individual workman, in view of the restrictions imposed on the union under section 18 of the Act and therefore, the reason for termination of the services of the workman is totally illegal and the party no.1 has appointed new employees and retained junior employees and there was no compliance of mandatory provisions by the party no.1 before termination of the workman from services and the workman is unemployed and not in gainful employment till date, except for the period from 17.04.2003 to 02.08.2003 and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

In support of such contentions, the learned advocate for the workman placed reliance on the decisions reported in 1998 LAB I.C. 159 (M.Rajaiah Vs. Bank of India), (2010), 5 SCC-497 (Anoop Sharma Vs. Executive Engineer, Public Health Division no.1, Panipat (Haryana), 2011-I-LLJ-403 (Raj) (UCO Bank & others Vs. Jagdish Narain Purviya).

10. In reply, it was contended by the learned advocate for the party no.1 that the workman was engaged purely in temporary capacity, intermittently for doing sundry work, due to administrative exigency and the workman was engaged by the branches, who had no authority to engage any person and the engagement was illegal and impermissible and such illegality cannot be perpetuated for indefinite period and the workman in his cross-examination has admitted such facts. It was further contented that the Bank had admitted in its reply before the Hon'ble High Court that the workman had completed 240 days of work in the preceding 12 calendar months from the date of his disengagement from services and no retrenchment compensation and one month's notice or one month's wages in lieu of such notice were given to him, but in view of the fact that the appointment of the workman was illegal and void, he is not entitled to any relief as per the principles enunciated by the Hon'ble Apex Court in the decision reported in AIR 2006 SC-1806 (Secretary, State of Karnataka Vs. Umadevi).

It was also submitted by the learned advocate for the party no.1 that the workman in his cross-examination has admitted that he uses to work as a daily wage earner as and when he gets work and as such, it can be held that

he is gainfully employed and as such, without prejudice to the bank at the most, the workman is entitled for the amount of retrenchment compensation and one month's wages as provided under section 25 of the Act, in view of the decisions of the Hon'ble Apex Court reported in (2007) 9 SCC-748 (Madhya Pradesh Administration Vs. Tribhuwan) and (2006) 5 SCC-173 (Municipal Council, Sujanpur Vs. Surinder Kumar and in view of the facts of the case and the ratio laid down by the Hon'ble Supreme Court, the workman is not entitled to any relief and the decisions cited by the workman are not applicable in the facts and circumstances of the present reference.

11. On perusal of the evidence on record, both oral and documentary and taking into consideration the submissions made by the learned advocates of the parties and the pleadings of the parties, it is found that the appointment of the workman from 10.02.1996 to 05.04.1997 was purely in temporary capacity intermittently on daily wages basis by the branch manager of the industrial estate branch, Chandrapur. It is also found that the appointment of the workman was not in accordance with the Rules of appointment of sub-staff of party no.1.

It is admitted by party no.1 that the workman had worked for 240 days in the preceding 12 months of the date of the termination of his services and before termination of his services, neither one month's notice nor one month's wages in lieu of notice or retrenchment compensation was given to him.

12. Though party no.1 has taken the stand that in view of the lapse of the panel of temporary employees as prepared on the basis of the settlement reached between it and the union on 17.11.1987 and modified from time to time, on 31.03.1997, the workman was disengaged, it was never pleaded by party no.1 that the name of the workman was included in the panel of temporary employees, which was prepared on the basis of the settlement and as he was not absorbed on permanent basis prior to 31.03.1997, he was terminated from service. The appointment of the workman on temporary basis was much later than the settlement dated 11.11.1987 and modification dated 16.07.1988, 27.10.1988 and 09.01.1991, such appointment of the workman was in violation of the clause 10 of the settlement dated 17.11.1987 and the directives of government of India issued vide letter dated 16.08.1990. Hence, the submission made by the learned advocate for the party no.1 in regard to the termination of the services of the workman due to lapse of the panel cannot be sustained.

13. As it is the admitted case of party no.1 that the workman had completed 240 days of work in the preceding 12 months of the date of termination of the services of the workman and before the termination, the mandatory provisions of section 25-F of the Act were not complied with, the termination amounts to retrenchment and the same is illegal.

14. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled to.

Though the workman has pleaded that there was violation of section 25-G of the Act and Rule 81 of the Rules, there is no legal evidence on record in support of such claim. The workman has not proved that except himself, anybody else was working in the said branch and after his disengagement, party no.1 engaged juniors in his place. Hence, the contention raised in this respect by the learned advocate for the workman cannot be sustained.

15. The learned advocate for the workman relying on the decision reported in (2010) 5 SCC-497 (Supra) which was decided on 09.04.2010 submitted that the workman is entitled for reinstatement with continuity and full back wages.

With respect, I am of the view that the decision cited by the learned advocate for the workman can be distinguished and has no clear application to the present reference. In the case referred by the Hon'ble Apex Court, there was no pleading that the initial engagement was not legal, whereas, in the present case, it is pleaded by party no.1 that the initial engagement of the workman was illegal.

Moreover, at this juncture, I think it proper to refer to the later decision of a coordinate Bench of the Hon'ble Apex Court decided on 31.08.2010 and is to be followed as per the judicial precedent, as reported in 2010(8) SCALE (Incharge Officer and another Vs. Shankar Shetty).

In the said decision, Hon'ble Apex Court have held that, "Industrial Disputes Act 1947/Section 25F/Daily wager / Termination of service in violation of section 25(F)/ Award of monetary compensation in lieu of reinstatement/ Respondent was initially engaged as daily wager by appellants in 1978/His engagement continued for about 7 years intermittently up to 06.09.85/ Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure prescribed in sec. 25(F) of the Act/ Labour court rejected respondents claim: holding that section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination 06.09.85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal-Whether an order of reinstatement will automatically follow in a case where engagement of a daily wager has been brought to an end in violation of section 25(F) of the Act-Allowing the appeal-held:

The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently up to September 6, 1985 i.e. about 25 years back. In a case such as the present one it appears to us that relief of reinstatement cannot be justified and instead monetary compensation

would meet the ends of justice. In our considered opinion the compensation of rupees one lakh (Rs. 1,00,000) in lieu of reinstatement shall be appropriate, just and equitable".

The principles enunciated by the Hon'ble Apex Court as mentioned above are squarely applicable to the present case at hand. In this case, the workman was engaged as daily wager on temporary basis by party no.1 on 10.02.1996. His engagement continued intermittently up to 05.04.1997. So, applying the said principles, it appears to me that a relief of reinstatement is not justified in this case and instead monetary compensation would meet the ends of justice. In my considered opinion compensation of Rs. 50,000 (Rupees fifty thousand) in lieu of reinstatement shall be appropriate, just an equitable. Hence it is ordered.

ORDER

The action of the management of State Bank of India, Region-II, Zonal Office, Nagpur, terminating Shri Prakash Gangadhar Dhakate, Ex-Peon, State Bank of India, Br. Industrial Estate, Chandrapur is unjustified.

The workman is entitled for monetary compensation of Rs.50,000 (Rupees fifty thousand only) in lieu of reinstatement. He is not entitled for any other relief.

The party no.1 is directed to pay the compensation of Rs. 50,000 (Rupees fifty thousand only) to the workman within one month from the date of Publication of the award in the Official Gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, टेलिकॉम, बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 268/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/431/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 268/2005) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The General Manager, Telecom, Bathinda and their workman, which was received by the Central Government on 24.01.2014.

[No. L-40012/431/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present : Sri Kewal Krishan, Presiding Officer.

Case No. I.D. No. 268/2005

Registered on 20.9.2005

Sh. Anjay Singh, S/o Sh. Roop Singh,
C/o Sh. N.K. Jeet, President,
Telecom Labour Union,
Mohalla Hari Nagar,
Lal Singh Basti Road,
Bathinda (Punjab) ...Petitioner

Versus

The General Manager, Telecom,
Bathinda(Punjab) 151001 ...Respondent

APPEARANCES :

For the workman : Ex parte.

For the Management : Sh. Anish Babbar, Adv.

AWARD

Passed on 10.1.2014

Central Government vide Notification No. L-40012/431/99-IR(DU) Dated 16.2.2000, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of General Manager, Telecom, Ferozepur in terminating the services of Sh. Anjay Singh S/o Sh. Roop Singh is legal and justified? If not, to what relief the workman is entitled and from which date?"

In response to the notice the workman appeared and submitted statement of claim pleading that he was serving as Gateman in the Office of SDOP Cantt., Ferozepur on a permanent job w.e.f. 1.7.1996 drawing the salary of Rs. 2138 per month. His services were terminated on 5.3.1999 without serving any notice, charge-sheet or inquiry. Even he has not been paid any compensation. That the persons junior to him were retained in service and even some persons were employed after his termination. Thus his termination is against the provisions of the Act and he is liable to be reinstated with all the benefits.

Respondent management filed written reply controverting the averments and denied the relationship. It is further pleaded that the respondent management has entered into contract with Bakshish Singh for providing labour for performing emergency work and the management did not maintain any service record of the labour supplied by the contractor. That the claimant may have been engaged by the contractor. That the workman was not an employee of the respondent management. Further objection that this Court has no jurisdiction to adjudicate the present petition was also taken.

In support of its case the workman appeared in the witness box and examined P.S. Hanspal.

Workman filed his affidavit reiterating the case as set out in the claim petition.

Sh. P.S. Hanspal is the SDO of the respondent management and was summoned to produce the record. He has stated that the record pertaining to casual labour is not maintained by the management.

The workman was proceeded against ex parte vide order dated 24.5.2011.

I have heard Sh. Anish Babbar, counsel for the management.

It is the case of the workman that he was employed by the respondent management as Gateman and he worked from 1.7.1996 to 5.3.1999. Respondent management is a statutory body and is governed by certain Rules and Regulations in making the appointments. It is nowhere the case of the workman that any procedure was followed when he was recruited in service. Even no appointment letter was issued to him nor the same is proved on the file. Even no record has come on the file to show that he was ever paid any salary by the respondent management. Thus it can be said that he was appointed as Gateman and he was an employee of the respondent management.

It is the definite case of the management that it has given the contract for providing labour for emergency needs and if the workman worked with the contractor, he cannot claim that he was an employee of the respondent management. Though P.S. Hanspal was summoned by the workman to prove the record, he has specifically stated that no record is maintained by the management of the casual labour as the same is provided by the contractor.

In the circumstances, the only conclusion is that workman has failed to prove that he was an employee of the respondent management and his services were terminated and he is not entitled for any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव इंजीनियर, सेंट्रल पब्लिक वर्क्स डिपार्टमेंट सेंट्रल डिवीजन-2, चंडीगढ़ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1083/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-42011/185/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1083/2005) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Executive Engineer, CPWD, Central Division-II, Chandigarh and their workman, which was received by the Central Government on 24.01.2014.

[No. L-42012/185/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 1083/2005

Registered on 21.9.2005

Sh. Ravinder Kumar S/o
Sh. Balak Ram, House No.627-B,
Kumhar Colony, Sector 25,
Chandigarh ...Petitioner

Versus

Executive Engineer, CPWD,
Central Division-II,
Kendriya Sadan,
Sector 9, Chandigarh ...Respondent

APPEARANCES :

For the Workman : Sh. Subhash Talwar, A.R.

For the Management : Sh. Anish Babbar, Adv.

AWARD

Passed on 10.1.2014

Central Government vide Notification No. L-42012/185/99/IR(DU) Dated 29.5.2000, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the Executive Engineer, Central Division, CPWD, Chandigarh in terminating the services of Sh. Ravinder Kumar S/o Sh. Balak Ram w.e.f. 29/12/98 is legal and justified? If not, to what relief the workman is entitled?"

In response to the notice, the workman appeared and submitted claim statement pleading that he was appointed on 5.6.1997 as Safai Karamchari after conducting his interview and his services were illegally terminated on 28.12.1998. That the respondent management has control over his work and he could be removed by it. That on 24.12.1998 LEO (Central) Chandigarh inspected the spot and recorded statements including that of the workman. That on 28.12.1998, workman was asked not to attend his duty w.e.f. 29.12.1998. He has completed more than 240 days of service which has been terminated in violation of Section 25F, G and H of the Act. He is liable to be reinstated with full back wages.

Respondent management filed written reply denying the relationship and pleaded that workman was never appointed by it. That the management requisitioned the labour from a contractor for petty jobs. Management had no control over the workman. That the management was not aware about the prohibition of law for engaging persons for sweeping jobs and the contractor was asked to stop supply of labour for the said purpose. Since the workman was not an employee of the management, there is no question of violation of any provision of the law.

In support of his case workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand respondent management examined Sh. D.K. Gupta, Executive Engineer who filed his affidavit reiterating the stand taken by he respondent management in the written statement.

I have heard Sh. Subhash Talwar, A.R of the workman and Sh. Anish Babbar, counsel for the management.

It was argued by A.R. of the workman that workman was employed on 5.6.1997 which stands proved from the statement of the workman as well from the fact that the management has not examined the contractor nor produced the record maintained by it; and it also did not produce the record relating to payment of wages to the contractor and the inference be drawn that the workman was employed by the management. An argument was also raised to criticize the statement of Sh. D.K. Gupta examined by the respondent and submitted that he did not know about the employment of the workman and further submitted that LEO (Central) Chandigarh visited the site on 24.12.1998 and recorded the statement of the workers including the applicant and when objection was raised that temporary employee cannot be employed for sweeping jobs, the services of the workman were arbitrarily terminated.

I have considered the contentions.

It is the definite case of the workman that he was appointed by the respondent management after conducting an interview on 5.6.1997 and he did remain in the employment up to 28.12.1998. The respondent management is a government agency and is governed by certain Rules and regulations for recruiting its employees but nothing has been shown that any procedure was followed prior to the conduct of the interview of the workman or any appointment letter was issued to him. Workman while appearing in the witness box had admitted that no appointment letter or termination order was issued to him. No record has been produced to show that he attended the office of the respondent management ever as its employee. If the respondent management did not examine any contractor through whom, if the workman was employed, or his records were not summoned, the same do not affect the respondent management rather it was for the workman to establish clearly on the file that he was employed by the respondent management and he worked there for more than 240 days. Even no record has been produced to establish that the workman has drawn salary from the department at any point of time. Since no documentary evidence has come on the file to establish the said fact, it cannot be said from the bare statement of the workman that he was employed by the respondent management, as much as it is the definite stand of the management that it has given contract for providing labour for petty jobs.

There is no denial of the fact that LEO (Central) Chandigarh visited the site on 24.12.1998 and raised some objection regarding employing temporary workers for sweeping jobs and as per the stand of the management contractor was asked not to supply the labour for the said purpose. But this fact again do not show that the worker was an employee of the management.

In the circumstances it is held that workman has failed to prove that he was an employee of the respondent management and it cannot be said that his services were terminated by it. Accordingly, the reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 598.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव इंजीनियर, सेंट्रल पब्लिक वर्क्स डिपार्टमेंट सेंट्रल डिवीजन-2, चंडीगढ़ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1082/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-42011/184/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 598.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1082/2005) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Executive Engineer, CPWD, Central Division-II, Chandigarh and their workman, which was received by the Central Government on 24.01.2014.

[No. L-42012/184/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 1082/2005

Registered on 21.9.2005

Sh. Jai Karan S/o Sh. Jaggu,
House No. 212, Janta Colony,
Sector 25, Chandigarh ...Petitioner

Versus

Executive Engineer, CPWD,
Central Division-II, Kendriya Sadan,
Sector 9, Chandigarh ...Respondent

APPEARANCES :

For the workman : Sh. Subhash Talwar, A.R.

For the Management : Sh. Anish Babbar, Adv.

AWARD

Passed on- 10.1.2014

Central Government vide Notification No. L-42012/184/99/IR(DU) Dated 27.1.2000, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the Executive Engineer, Central Division, CPWD, Chandigarh in terminating the services of their workman Sh. Jai Karan S/o Jaggu w.e.f. 29/12/98 is legal and justified? If not, to what relief the workman is entitled?"

In response to the notice the workman appeared and submitted statement of claim pleading that he was appointed by the respondent management as Safai Karamchari on 5.6.1997 and his services were illegally terminated on 28.12.1998. That the respondent management has total control on the workman's employment who was liable to be removed from service on account of unsatisfactory work by the respondent management. That on 24.12.1998 LEO (Central) Chandigarh inspected the spot and made some inquiries from the workers including the applicant. He was asked not to attend the duties on 28.12.1998 w.e.f. 29.12.1998. That he worked for more than 240 days and his services have been terminated without serving any notice and payment of retrenchment compensation and in violation of Section 25F, G and H of the Act. That he be reinstated in service with full back wages.

Respondent management filed written reply denying the relationship and pleaded that workman was never appointed by it. That the management requisitioned the labour from a contractor for petty jobs. Management had no control over the workman. That the management was not aware about the prohibition of law for engaging persons for sweeping jobs and the contractor was asked to stop supply of labour for the said purpose. Since the workman was not an employee of the management, there is no question of violation of any provision of the law.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

On the other hand the management examined Sh. D.K. Gupta, Executive Engineer who filed his affidavit reiterating the averments as contained in the written statement.

I have heard Sh. Subhash Talwar, A.R of the workman and Sh. Anish Babbar, counsel for the management.

It was argued by A.R. of the workman that workman was employed on 5.6.1997 which stands proved from the statement of the workman as well from the fact that the management has not examined the contractor nor produced the record maintained by it; and it also did not produce the record relating to payment of wages to the contractor and the inference be drawn that the workman was employed by the management. An argument was also raised to criticize the statement of Sh. D.K. Gupta examined by the respondent and submitted that he did not know about the employment of the workman and further

submitted that LEO (Central) Chandigarh visited the site on 24.12.1998 and recorded the statement of the workers including the applicant and when objection was raised that temporary employee cannot be employed for sweeping jobs, the services of the workman were arbitrarily terminated.

I have considered the contentions.

It is the definite case of the workman that he was appointed by the respondent management after conducting an interview on 5.6.1997 and he did remain in the employment up to 28.12.1998. The respondent management is a government agency and is governed by certain Rules and regulations for recruiting its employees but nothing has been shown that any procedure was followed prior to the conduct of the interview of the workman or any appointment letter was issued to him. Workman while appearing in the witness box had admitted that no appointment letter or termination order was issued to him. No record has been produced to show that he attended the office of the respondent management ever as its employee. If the respondent management did not examine any contractor through whom, if the workman was employed, or his records were not summoned the same do not affect the respondent management rather it was for the workman to establish clearly on the file that he was employed by the respondent management and he worked there for more than 240 days. Even no record has been produced to establish that the workman has drawn salary from the department at any point of time. Since no documentary evidence has come on the file to establish the said fact, it cannot be said from the bare statement of the workman that he was employed by the respondent management, as much as it is the definite stand of the management that it has given contract for providing labour for petty jobs.

There is no denial of the fact that LEO (Central) Chandigarh visited the site on 24.12.1998 and raised some objection regarding employing temporary workers for sweeping jobs and as per the stand of the management contractor was asked not to supply the labour for the said purpose. But this fact again do not show that the worker was an employee of the management.

In the circumstances it is held that workman has failed to prove that he was an employee of the respondent management and it cannot be said that his services were terminated by it. Accordingly the reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 599.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर (प्रोजेक्ट्स), अफकॉन्स इंफ्रास्ट्रक्चर लिमिटेड, जम्मू के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 289/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-42011/92/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 599.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 289/2013) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The General Manager (Projects), Afcons Infrastructure Limited, Jammu and their workman, which was received by the Central Government on 24.01.2014.

[No. L-42011/92/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer.

Case No. I.D. No. 289/2013

Registered on 18.9.2013

The President Bhartiya Mazdoor Sangh(J&K) Parade, Jammu, Jammu ...Petitioner

Versus

1. The General Manager(Projects), M/s. Afcons Infrastructure, Ltd., Jammu-Udhampur, NHIA Road Project, By Pass Road, AT/PO Panjgrain, Nagrota-181221, Jammu ...Respondents

APPEARANCES

For the workman : Ex parte.

For the Management : Sh. Ajit Kumar for respondent No. 2

AWARD

Passed on- 23.12.2013

Central Government vide Notification No. L-42011/92/2013-IR(DU) Dated 9.9.2013, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of M/s. Afcons Infrastructure Limited, Jammu-Udhampur, NHIA Road Project in not accepting the demands of union is justified? To what relief the workmen are entitled to and from which date?"

In response to the notice, Sh. Ajit Kumar appeared on behalf of respondent No.2. The workman-Union was proceeding against ex parte vide separate order of today.

Since the workman-Union have been proceeded against ex parte and no statement of claim has been submitted and as such it is to be held that the workman-Union is not entitled to any relief. Therefore the reference is accordingly answered against the workman-Union. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 600.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल, सेंट्रल पॉवर रिसर्च इंस्टिट्यूट, बैंगलोर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 01/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-42012/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 29th January, 2014

S.O. 600.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 01/2013) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Director General, Central Power Research Institute, Bangalore and their workman, which was received by the Central Government on 24.01.2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT "SHRAM SADAN", G. G. PALYA, TUMKUR ROAD, YESWANTHPUR, BANGALORE – 560 022

Dated : 15th JULY 2013

PRESENT : Shri S N NAVALGUND, Presiding Officer

Complaint No. 01/2013

Complainant	**Respondent**
The General Secretary, Central Power Research Institute Employees Union, No. 822, 1st Main Road, Yeswanthpura, Bangaore-560 022.	The Director General, Central Power Research Institute, Prof. Sir C. V. Raman Road, Sadashivnagar, P B No. 8066, Bangaore-560 080.

Complaint No. 02/2013

Complainant	**Respondent**
1. Sh. N K Ousef, No. 4, GEO House, 1st A Cross, Nagaraj Layout, Kavalbyrasandra, R T Nagar, Bangalore-32.	The Chief Administrative Officer, Central Power Research Institute, Prof. Sir C V Raman Road, Sadashivnagar, P B No. 8066, Bangalore-560 080.
2. Sh. Govinda Raju H V, S/o Late Mr. Venkatappa, No. 82, Vinayakanagara, Hesarghatta, Bangaore-560 088.	

Complaint No. 03/2013

Complainant	**Respondent**
1. Sh. K Channaiah, Qrt. No. 8, Type II, CPRI Colony, New BEL Road, Bangalore-12.	The Additional Director & Disciplinary Authority, Central Power Research Institute, Prof. Sir C V Raman Road, Sadashivnagar, P B No. 8066, Bangalore-560 088.
2. Sh. K John, Qrt. No. 10, Type II, CPRI Colony, New BEL Road, Bangalore-12.	

APPEARANCES :

I Party : Shri T. Anantharam, Authoirsed Representative

II Party : Shri M. R. C., Advocate

COMMON ORDER ON APLICATION OF RESPONDENT FILED UNDER SECTION 11 OF I. D. ACT DATED 05.06.2013

1. In these complaints filed by the employees and members of CPRI Employees Union under Section 33 A of

the Industrial Disputes Act for change in their Service Conditions without approval of this Tribunal as required under Section 33 (2) (b) wherein the reference raised by the CPRI Employees Union for adjudication on their demands was pending in C R 54/2007 on the file of this tribunal, the present applications are filed by the Respondent under Section 11 of the ID Act to dismiss the complaints as not maintainable and also to recall and set aside the interim orders passed in respective complaints since they have become void-abintio in view of this tribunal rejecting the Reference in C R No. 54/2007 by Award dated 25.02.2013 (notification dated 11.03.2013) holding that Respondent is not an Industry as defined under Section 2(j) of ID Act to come under the perview of the ID Act and the jurisdiction of this tribunal/Court. In all these applications it is stated that on the specific contention of the Respondent in the reference that it is not an industry as defined under Section 2(j) of ID Act, this tribunal while upholding the said contention rejected the reference by award dated 25.02.2013 holding that it is not an industry and thereby this tribunal has no jurisdiction to adjudicate on the demands covered in the reference, these complaints do not survive/not maintainable and all the interim orders passed have become void-abintio and non-est in the eyes of law.

2. These applications are opposed by the complainants contending that at the time of change in their service conditions the valid reference made by the Central Government for adjudication on the demands was being pending before this tribunal/Court, it was mandatory on the part of the Respondent to seek permission of this tribunal under Section 33 (3) as far as the complainants in Complaint No. 01/2012 and 02/2012 and under Section 33(4) as far as Complainants in Complaint No. 03/2012 who were declared as protected workmen by the competent authority and as admittedly no such applications were filed before this tribunal/court seeking permission they having approached with these complaints they have to be adjudicated upon as if they were a dispute referred to this tribunal in accordance with the provisions of the act and submit the award to the appropriate government and cannot dismiss on such applications filed by the Respondent.

3. I have heard the arguments addressed by the Authorised Representative of the Complainants and learned advocate appearing for the Respondents and carefully gone through all the citations referred to by them. The learned authorised representative of the complainants urged that admittedly when the impugned actions touching the service conditions of the complainants in the respective complaints were effected during the pendency of the reference made by the Central Government for adjudication on the demands of the Employees of the Respondent on a dispute raised by its Employees union in C R 54/2007 on the file of this tribunal/Court it was mandatory on the part of Respondent as contemplated Under Section 33(3) in respect of Complainants in Complaint No. 01/2012 and 02/2012 and Section 33(4) in respect of Complainants in Complaint No. 03/2012 who were declared as protected workmen by the competent authority and when this court passed interim orders in the respective complaints they cannot be said to be void-abintio (without jurisdiction) and the court has to pass an award treating the complaints as if they are reference by the competent authority under section 10 of the ID Act and cannot dismiss on such applications filed by the Respondents. In support of his contention/arguments he cited the following decisions :

1. The Bhavnagar Municipality vs. Alibhai Karimbhai and others reported in 1977 SCC (L&S) 264 (SC).
2. Order dated 28th Day of May 2010 of Hon'ble High Court of Karnataka in W P No. 8576/2008 in the case of M/s Madhura Coats Pvt. Ltd. Vs. The workmen of Madura Coats.
3. Gujarath Agricultural University vs. All Gujarat Kamdar Karmachari Union, reported in 2009 (IV) LLJ 38L (SC).
4. Jaipur Jilla Sahakara Bhoomi vs. Vikas Bank Ltd., reporte din 2202 (1) LLJ 834 (SC).
5. Container Corporation of India Ltd. Vs. Sanjeev Kumar, reported in 2012 (II) LLJ 629 (Delhi).
6. Yellapa B vs. Steel Authority of India Ltd., reported in 2203 (III) LLJ 1056 (Calcutta).
7. Statesman Ltd vs. First Industrial Tribunal West Bengal reported in 2012 (II) LLJ 577 (Calcutta)DB.
8. Top Security vs. Subhash Chandra reported in 2012 (IV) LLJ. 542 Delhi (DB).
9. Order dated 12th day of March 2013 passed by Hon'ble High Court of Karnataka Division bench in the case of The Chief Traffic Manager vs. M Narayana Reddy BMTC in Writ Appeal No. 5738/2012 (L).
10. Arasu Virivu Pokkuvara Thu Cozhiyar Sangam vs. State Express Transport Corporation Ltd., Chennai and others reported in 2006 (III) LLJ 245 (madras) DB.
11. Bharatiya Employees Mazdor Sangha vs. Industrial Tribunal, Chennai reported in 2012 (II) LLJ. 716 (Madras).
12. BPL Ltd., vs. R Sudhakar reported in 2004 (II) LLJ 834 (SC).
13. Karnataka State Road Transport vs. Asgar Pasha, reported in 1998 (II) LLJ. 61 (Karnataka).

14. Ranger Breweries vs. State of Himachal Pradesh reported in 1998 (III) LLJ (Supp) 321 (HP) DB.

15. Portected Workmen : For full year from date of decision Batra Hospital & Medical Research Centre vs. Batra Hospital Employees Union reported in 2013 (II) LLJ. 132 (Delhi).

16. Grindlays Bank Ltd. Vs. CGIT 1981 SCC (L&S) 309 SC.

4. Interalia, the learned advocate appearing for the Respondent urged that the Interim orders in the respective complaints were passed by this tribunal to maintain status quo on the ground that whether CPRI is an Industry is yet to be adjudicated in C R 54/2007 and now this tribunal having passed an award holding that the CPRI/ Respondent is not an industry and consequently does not come under the perview of the ID Act and jurisdiction of this tribunal the very reference made by the Central Government being held as had the present complaints do not survive and are liable to be rejected in limine. He also urged that in Writ Petition No. 14313/2012 (L_RES) in which the Order of Assistant labour Commissioner dated 18.04.2012 declaring the complainants in Complaint No. 03/2012 and others as protected workmen the Hon'ble High Court having disposed off that Writ Petition observing the said order being subject to the outcome of the proceedings before this tribunal in the pending reference i.e.. C R 54/2007 in view of this court holding in C R 54/ 2007 respondent being not an industry and rejecting the reference that order passed by the Assistant Labour Commissioner also do not come to the help of the complainant in Complaint No. 03/2012 and urged to allow his applications and to dismiss the complaints.

5. There cannot be any dispute that pending a valid reference the management in order to effect any change in the Service Condition of the workmen covered in such reference has to seek permission of the tribunal where the reference is pending and there cannot also be a dispute as to the decisions relied upon by the learned authorised representative of the complainants that the complaints filed under Section 33 A have to be treated as reference under Section 10 of the ID Act and conclude the same with Award. But only on receipt of a reference for adjudication it cannot be said it is a valid reference and it is left open to the adjudicating forum to decide having regard to the contention taken by the parties to decide whether it is a valid reference. In the instant case the mother dispute covered in C R 54/2007 is rejected coming to a conclusion that the Respondent is not an industry and do not come under the perview of the industrial dispute act and jurisdiction of this tribunal/court upholding the contention of the Respondent in the Reference that it is not an industry and fall under the perview of the industrial dispute act it is a determination that the reference is not valid as such there is no meaning in proceeding with these complaints on merits as urged by the learned advocate appearing for the Respondent. It is seen from the Order passed by the Hon'ble High Court of Karnataka in W P No. 2604-2605/2013 (L-TER) wherein the interim order passed by this tribunal in Complaint No. 03/2012 under which direction was given to the Respondent to pay the complainants wages @ last payment made to them before the impugned order of termination from service from the date of complainant i.e. 25.06.2012 till the final adjudication of the complaint and also to allow the complainants to stay in the quarters in their occupation while holding that the tribunal which is yet to decide its jurisdiction in the matter ought not to have passed such a interim order directing the Respondent to pay the last wages drawn is wholly inappropriate and so far as the interim order directing the complainants is concerned is to be sustained makes it clear that the maintainability of these complaints depends upon the determination by this tribunal regarding jurisdiction to try or adjudicate the demands raised in C R 54/2007. Therefore, now in view of this tribunal's/court's determination that CPRI/Respondent is not an Industry and consequentially does not fall under the perview of the ID Act and jurisdiction of this tribunal/court these complainants cannot get adjudicated their grievances raised in these complaints under the hands of this tribunal/ court. Under the circumstances, as rightly urged on behalf of the Respondents in my considered view all the three complaints deserves to be dismissed. In view of the catena of decisions relied upon by the Authorised Representative of the Complainants such an application under Section 33 A has to be ended with Award this very Order can be treated as Award in the respective complaints and has to be sent for publication to the Government which made the reference in C R 54/2007. In the result, I pass the following

ORDER

The three separate applications filed by the Respondent in Complaint Nos. 01/2012, 02/2012 and 03/2012 dated 05.06.2013 are Allowed and consequently in view of the Award passed in C R 54/2007 holding that CPRI/Respondent is not an Industry coming under the perview of the ID Act and the jurisdiction of this tribunal/court the complaints are Dismissed and the interim orders passed in the respective complaints are vacated. This Order shall be treated as an Award in complaint No. 01/2012, 02/2012 and 03/2012 and will come into effect from the date of notification from the Ministry and shall be sent to Ministry of Labour and Employment for publication in the gazette. No order as to cost under the circumstances.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 29 जनवरी, 2014

का.आ. 601.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर टेलिकॉम, कर्नल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 450/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/76/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 29th January , 2014

S.O. 601.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 450/2005) of the Central Government Industrial Tribunal/Labour Court No. II, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of The General Manager ,Telecom, Karnal and their workmen, which was received by the Central Government on 24-01-2014.

[No. L-40012/76/2003-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer.

Case No. I.D. 450/2005

Registered on 19.8.2005

Sh. Lallan Singh, S/o Sh. Ghamri Singh,
C/o Baba Nath Ram, Gali No. l0,
Braham Nagar, Hansi Road, Karnal ...Petitioner

Versus

The General Manager,
Telecom, Department of Telecom,
Karnal - 132001 ...Respondent

APPEARANCES

For the workman Sh. J.K. Kamboj Advocate.

For the Management Sh. Anish Babbar Advocate.

AWARD

Passed on : 15-1-2014

Central Government vide Notification No. L-40012/76/2003 (IR(DU) Dated 31.7.2003, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial Dispute for adjudication to this Tribunal:-

> "Whether the action of the management of BSNL,Karnal in terminating the services of Sh. Lallan Singh, S/o Sh. Ghamri Singh, a worker w.e.f. 1.3.2001 is just and legal? If not to what relief he is entitled to?"

In response to the notice, the workman appeared and submitted statement of claim pleading that he was appointed as daily paid worker by the management in November 1982 and continuously worked with SDO, Telephones up to 31.6.1993. Workman remained on leave from 1.7.1984 to 1.12.1991 and thereafter worked up to 28.2.2001. His work and conduct remained satisfactory. However his services were terminated on 1.3.2001 in violation of the provisions of Section 25F, G and H of the Act as no notice was issued to him prior to his termination and no retrenchment compensation was paid. That the persons junior to him were retained in service and the management also made fresh recruitments after terminating his services. That his termination is liable to be set aside with all the benefits.

Respondent management filed written statement denying the relationship and pleaded that the workman worked only as a petty contractor on a negotiated amount and he was never given any appointment by the management. He was paid Rs.2000 on 30.7.1999, Rs.1950 on 8.8.1999 and Rs.1365 on 10.8.1999 for the work performed by him. He was not paid any salary. Since he was not an employee of the management, there is no violation of any provision of the Act.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand respondent has examined Sh. H.K. Aggarwal who filed his affidavit supporting the case of the management.

It was argued by the learned counsel for the workman that workman continuously worked from November 1982, though he remained on medical leave from 1.7.1984 to 1.12.1991 and his services were arbitrarily terminated on 1.3.2001 in violation of the provisions of the Act and he is entitled to be reinstated in service with all the benefits.

I have considered the contention of the learned counsel.

It is the definite case of the workman that he was appointed as daily paid worker by the management during November 1982. But no record has come on the file to establish that he has ever drawn any salary from the department. It is the definite case of the management that petty work was given to him as contract on 'need basis' and the workman while appearing in the witness box identified his signatures on bills Mark 'A', Mark 'B' and

Mark 'C' showing that payment was made to him for the work done by him as contractor. Though the workman pleaded that he was employed as daily paid worker but he did not specify the job for which he was employed. In the circumstances, it cannot be said that he was ever employed by the management as daily wager and being so, he cannot claim that he was an employee of the management and his services were erminated.

In result, it is held that the workman is not entitled to any relief and the reference is accordingly answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer.

नई दिल्ली, 30 जनवरी, 2014

का.आ. 602.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लार्सेन एंड टूब्रो लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 24/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था ।

[सं. एल-29011/53/99-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th January , 2014

S.O. 602.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2000) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Larsen and Toubro Limited and their workman, which was received by the Central Government on 27-1-2014.

[No. L-29011/53/99-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/24/2000

Date: 07-05-2013

Party No. 1

Vice President,
Larsen & Toubro Ltd,
Now- Ultratech Cement, Awarpur Cement Works, Post-Awarpur, Tah, Kopana,
Chandrapur(MS)

Versus

Party No. 2

The General Secretary,
Larsen & Toubro Ltd Cement Kamgar Sangh, Post: Awarpur, Tah: Kopana,
Chandrapur(MS) .

AWARD

(Dated: 7th May, 2013)

In exercise of the powers conferred by clause (d) of sub- section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of L&T Ltd. now Ultratech Cement, and their union., "Larsen & Toubro Ltd. Cement Kamgar Sangh", for adjudication, as per letter No.L-29011/53/99-IR (M) dated 02.02.2000, with the following schedule:-

> "Whether the action of the management of Larsen & Toubro Ltd. in not paying increase of Rs. 890/- as per 2nd national settlement, by and for the cement workers, is legal & justified? If not, to what relief the workmen are entitled and from which date? What other directions are necessary in the matter?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Larsen & Toubro Ltd. Cement Kamgar Sangh" ('the union" in short), filed the statement of claim and the management of Larsen & Toubro /Ultratech Cement Ltd., ("Party No. I" in short) filed its written statement.

The case of the union as projected in the statement of claim is that it (the union) is a registered trade union and the National level workers federation of cement employees, known as "Indian National Cement workers Federation, Mumbai entered into an agreement with the cement manufacturs Association, in respect of revision of wages, before the commissioner of Labour at New Delhi on 12.07.1996 and the said settlement was made effective from 01.04.1996 and as per the said settlement, the association of management agreed to increase the house rent allowance at the rate of Rs. 75 per month and total pay packet of wages at the rate of Rs. 890 per month and no condition was laid down in the said settlement to deduct house rent of Rs. 75 per month, from the employees, whom accommodation was provided by the respective management, but the party no. 1 started deducting of Rs. 75, the amount of HRA from the monthly wages of the employees w.e.f. 01.04.1996 and it (union) raised objection and requested the party no. 1 not to deduct the amount of HRA of Rs. 75/ and after several discussions, during the meeting dated 09.04.1999, party no. 1 agreed to refer the dispute to the conciliation officer-Cum-Asstt. Labour Commissioner (Central), Chandrapur and accordingly the

matter was referred to the ALC (C), Chandrapur, but on failure of the conciliation, failure report was submitted by the ALC to the Central Government and the Central Government referred the dispute to the Tribunal for adjudication. It is further pleaded by the union that the deduction of the HRA by the party no.1 was contrary to the terms of settlement and the employees are entitled for the full wages of Rs. 890 per month, as per the said settlement and the action of party no. 1 is totally illegal and unjustified and the same is liable to be quashed and set aside. It is also pleaded by the union that other managements of the Cement Industry paid the full wages as per agreement dated 12.07.1996, without effecting any deduction of HRA of Rs. 75 from their employees, even though they had provided quarters to their employees.

The union has prayed to declare the action of party no. 1 as illegal and unjustified and to direct the party no. 1 to pay the increased amountof wages of Rs. 890 w.e.f. 01.04.1996 with interest of 18%, without deduction of HRA of Rs. 75 per month.

3. The party no. 1 in their written statement have pleaded inter-alia that the employees, whose names have been enlisted in the schedule to the statement of claim are provided with residential accommodation in the well maintained colony situated in the vicinity of their establishment and as such, the claim staked-up by the union for payment of house rent allowance to the said employees cannot be acceded to, as the claim is untenable and the claim made by the union is misconceived and the same is founded on erroneous interpretation of the settlement and the claim for house rent allowance and the total pay packet as claimed does not tally with the terms and conditions regulating the subject in the settlement and the union has wrongly claimed house rent allowance and the total pay packet and they implemented the mandate of the settlement with regard to payment of house rent allowance to all workers, who are not provided with residential accommodation effective from 01.04.1996 and the very concept of payment of house rent allowance emerge only in the cases of employees, who are not provided with residential accommodation, which is in the nature of a subsidy to compensate to certain extend the liability of rental for acquiring residential accommodations from the' open market and they did not commit of any wrong in absorbing Rs. 75 per month provided as house rent allowance from the employees, who were provided with accommodation, while implementing the settlement and the demand made by the union is unjust and opposed to the spirit of the settlement. The party no.1 have 'further pleaded that the reference is totally vague and the Central Government has enlarged the scope of the dispute under misconception and non-application of mind into the details of the case, as because, out of the total increase of Rs. 890 per month, as stipulated in the settlement, one of the items was in regard to payment of enhanced house rent allowance at the rate of Rs. 75 per month, payable from 01.04.1996 and house rent allowance was not admissible to the workers, who were provided with residential accommodation and the only dispute raise by the union before the conciliation officer was in regard to payment of house rent allowance of Rs. 75 per month also to the employees, who had been provided with residential accommodation, but the schedule to the order of reference is something entirely different than the dispute agitated by the union and from the schedule of reference, it appears that as if, none of the workers employed in their establishment have been paid the amount of Rs. 890 per month in compliance of the settlement and the demand made by the union for payment of house rent allowance to those workers provided with residential accommodation is unjust and opposed to the spirit of the settlement and their refusal to concede the demand for payment of house rent allowance to the employees who are provided with residential accommodation is correct and perfectly legal and on a reference by them, the cement manufacturers association clarified that the agreement dated 12.07.1996 is subject to Arbitration Award of 1983 and all the existing service conditions of the agreement shall continue to remain in force till revised and unless modified by another settlement, the present practice and method of recovery of house rent allowance prevailing in each cement unit will continue and the said clarification issued by the cement manufacturers association at the instance of the workers federation put at rest the controversy in the matter and nothing remains to be adjudicated.

Party no. 1 has further pleaded that the claim of the union that other managements of the cement industries have implemented the settlement dated 12.07.1996 with appropriating the house rent allowance in respect of those workers, who are provided with residential accommodation is distorted, misleading and incorrect and the cement companies, namely, Ambuja Cement, Rajshree Cement, Dalmia Cement, Century Cement, India Cement, Shree Digvijay Cement, Andha Cement, Zuri Cement, J.K. Cement, Mysore Cement, Maihav Cement and Jaypee Rewa Cement etc have implemented the settlement in question with specific reference to payment of house rent allowance in similar and same manner as implemented by them and the union has failed to justify the claim with regard to the workers in the list and the claim does not stand to reason and. the issue of payment of house rent allowance of Rs. 75 per month to the employees, who are provided with housing accommodation has not been made out a subject matter in the schedule of reference and as the claim made by the union is untenable, the reference is liable to be answered in the negative.

4. At this juncture, I think it necessary to mention some important facts relating to the reference, which are as follows:-

The party no. 1 nominated one Mr. C.V. Pavaskar, a member of the Central Executive Committee of the federation to represent them before this Tribunal. The union raised objection to the appearance of Shri Pavaskar by filing an application. Vide order dated 30.07.2001, this Tribunal disallowed the appearance of Shri Pavaskar on the ground that he is a practicing advocate. Being aggrieved by the order dated 30.07.2001, the party no.1 filed writ petition no. 3259/2002, before the Hon'ble High Court, Nagpur Bench, Nagpur for redress. The Hon'ble High Court by an interim order dated 16.12.2002, permitted Shri C.V. Pavaskar to represent the party no. 1 before this Tribunal. The writ petition was finally disposed of by the Hon 'ble High Court on 11.11.2011, upholding the interim order dated 16.12.2002. It is also necessary to mention that the further proceedings of the reference had been stayed by the Hon 'ble High Court in the aforesaid writ petition and such stay was vacated due to the final disposal of the writ application on 11.11.2011.

After receipt of the order passed by the Hon 'ble High Court in writ petition no. 3259/2002 dated 11.11.2011, both the parties were noticed to appear before this Tribunal to proceed further in the reference. In response to such notice, both parties appeared on 13.04.2012. On 13.04.2012, in presence of both the parties, order was passed for the cross- examination of the witness for the petitioner (union) fixing the case to 11.05.2012. On 11.05.2012, though the management appeared none appeared on behalf of the union. On 29.08.2012, 08.10.2012, 02.11.2012, 20.12.2012, 24.01.2013, 11.03.2013, 03.04.2013 and 12.04.2013 both the parties remained absent.

The respective witnesses for the parties, whose evidence were filed on affidavit also did not appear for their cross- examination, inspite of giving of sufficient opportunity to the parties to produce their respective witness. Hence, the evidence was closed after expunging their evidence. No argument was also made by the parties. Hence, the reference was posted for award.

5. Perused the pleadings of the parties and the available documents on record. Even though, the Central Government has referred the dispute for adjudication with the schedule as to whether the action of the party no. 1 in not paying the increase amount of Rs. 890 to the cement workers as per 2nd National settlement is legal and justified, it is found from the claim made by the union in the statement of claim that the dispute is only regarding non-payment of house rent allowance of Rs. 75 to the workers (as per list attached to the statement of claim), who have been given residential accommodation by party 'no. 1. The demand of payment of house rent allowance of Rs. 75 per month to the workers, who have been allotted residential accommodation was not been included in the reference. From the above mentioned facts, it appears that the schedule of reference is not proper.

6. Perused the materials on record. It is the admitted case of the parties that the 383 workers, who had not been paid house rent allowance of Rs. 75 per month had been allotted with residential accommodation by party no. 1. There is no dispute that the very concept of payment of house rent allowance emerges only in the case of the employees, who have not been given residential accommodation by the employer. So, the workers, who have been provided with residential accommodation are not entitled to claim house rent allowance. Hence, the claim of the union for payment of house rent allowance to those workers is not tenable. Hence, it is ordered:—

ORDER

The action of the management of Larsen & Toubro Ltd in not paying the entire increased amount of Rs. 890 as per 2nd national settlement, by and for the cement workers, to the 383 workmen (as per list furnished with the statement of claim) is legal & justified. The workers are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 जनवरी, 2014

का.आ. 603.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 81/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था ।

[सं. एल-30011/75/2001-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 30th January , 2014

S.O. 603.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/ 2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Limited and their workman, which was received by the Central Government on 27-1-2014.

[No. L-30011/75/2001-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/81/2001

Date: 30-12-2013

Party No. 1 :

The General Manager(WZ), Byculle, Hindustan Petroleum Corpn. Ltd., West Zone, J.J.Rd Mumbai-400008.

The Regional Office, Hindustan Petroleum Corpn. Ltd., Regional Office, Oriental Building, 2nd Floor, S.V. Patel Marg, Nagpur.

Versus

Party No. 2 :

The Dy. General Secretary, Petroleum Worker's Union (WZ), POI Depot, HPCL, Khapri, Nagpur- 441108.

AWARD

(Dated: 30th December, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of HPCL and their workman, Shri Surendra Yadav, for adjudication, as per letter No.L-30011/75/2001-IR (M) dated 15.10.2001, with the following scheduler—

> "Whether the action of the management of Hindustan Petroleum Corpn. Ltd., imposing the punishment of reduction of lower stage in scale to Sh. Surendra Pilluram Yadav w.e.f. 19.12.97 is justified? If not, to what relief is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Surendra Yadav, ("the workman" in short) through his union, "The Petroleum Worker's Union," ("the union" in short) filed the statement of claim and the management of HPCL, ("party no. 1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that the workman after obtaining heavy driving licence, came to be appointed as a heavy vehicle driver w.e.f. 29.11.1978 by party no.1 in its POI Depot, Khapri, Nagpur and the workman is in continuous service of party no.1 from the date of his initial appointment with clean and excellent service record and it (union) is a registered trade union, under the Trade Unions Act, 1926 and the workman is its member and because of the union activities, the party no.1 held grudge against its members and the party no.1 is an industry and is governed by the provisions of the Act and the provisions of Industrial Employment (Standing Orders) Act, 1946 are applicable to party no.1 and have got over riding effect.

The further case as presented by the union is that on 30.01.1995, the workman was served with a charge sheet containing several false charges against him and the submission of the charge sheet itself was illegal and the workman denied the charges by submitting a detailed reply dated 17.02.1995 and an enquiry was conducted against the workman in a most illegal and arbitrary manner and the enquiry officer and the presenting officer were well educated and fully conversant with the law and the request of the workman to allow him to engage an advocate to defend him in the enquiry was rejected and permission to engage an employee of other department situated at Nagpur was also rejected by the enquiry officer and the same was violative of the principles of natural justice and the workman demanded various documents on the basis of which charges were framed against him, but the enquiry officer refused to supply any document and the refusal of permission to engage an advocate and to supply of documents caused serious prejudice to the workman and he could not able to cross-examine the well educated prosecution witnesses and one Shri Harishankar Meshram, a co-driver of the workman had consented to represent the workman in the departmental enquiry, but he also backed out under the threat of the Depot Manager, Shri Parihar and the same rendered the. enquiry one sided against the workman and the workman was not asked by the enquiry officer as to whether he wanted to cross-examine the witnesses for the management or to adduce any evidence and the order of punishment of reversion of the workman on the basis of the ex parte enquiry and the reversion of the workman from heavy vehicle driver to the post of general mazdoor resulted in loss of Rs.500 in his basic pay, as it was brought down to Rs.3300 from Rs.3800 and being aggrieved by the punishment imposed against him, the workrdan preferred on appeal dated 28.04.1997 before the appellate authority on the ground that the entire enquiry proceeding was illegal and the punishment of reversion could not have been imposed upon him, as he was directly on the post of heavy vehicle driver Grade-I and the appellate authority by its order dated 19.12.1997 modified the punishment from reversion to lower cadre to one of

"reduction to lower stage in scale" and the modified punishment is also illegal as the Industrial Employment (Standing Orders) Act, which is applicable to the party No.1 does not provide for withholding of increments as punishment and in view of the same, the order of punishment passed by the appellate authority dated 19.12.1997 deserves to be set aside and quashed.

It is also pleaded by the union on behalf of the workman that the workman approached the Hon'ble High Court by filing writ petition no. 1998 of 1998, against the order of the appellate authority and the Hon'ble High Court, however, directed to approach the Assistant Labour Commissioner (Central), being the appropriate forum for redressal of his grievance, so the workman approached the ALC accordingly, but the conciliation proceedings failed, leading to the reference of the dispute to this Tribunal for adjudication and the entire action of the party no.1 is illegal, arbitrary and violative of the principles of natural justice and the same is liable to be quashed.

Prayer has been made to hold the punishment imposed against the workman to be illegal and to set aside the same and to restore all financial benefits to the workman.

3. The party no.1 in the written statement admitting the recruitment of the workman as a heavy vehicle driver on 29.11.1978 and denying all other allegations, has pleaded inter-alia that during the tenure of service of the workman, he was counseled on several occasions for his indisciplined behaviour and he was also charge sheeted during March, 1987, for his doubtful integrity and on his written request, a lenient view was taken at that time, by issuing him a warning letter on 06.10.1987, but even thereafter, there was no improvement in his conduct and behaviour and reports were received against the workman that on or about 05.09.1994, 14.09.1994 and 16.11.1994, because of his late submission of the demand drafts received by him from the customers, execution of the indent was delayed and on 24.09.1994, he refused to carry out the lawful, reasonable orders of the operations officer, behaved in an indiscipline manner with the Depot In-charge and also behaved in a riotous, disorderly and undisciplined manner with the Depot Superintendent and report was also received against him that on 24.09.1994, by parking his motor cycle in front of the Tank truck, he not only obstructed another heavy vehicle driver to proceed to Katol to deliver the product, but also, he abused the other driver and threatened to kill him and all these reported acts and omissions on the part of the workman constituted misconduct as specified in its own certified standing orders, which govern and regulate the conditions of service of its employees, so the charge sheet dated 30.01.1995 was issued to the workman leveling four charges as detailed in the charge sheet and as the reply of the workman dated l7.02.1995 was found to be unsatisfactory, it was decided to hold a domestic enquiry against him and Shri G.S.V. Prasad, the then Deputy Manager (operations), Nagpur Regional Office and Shri Amitab Dhar, the then Senior Operations Officer, Chandrapur, LPG Plant, who were basically operations people and were not legally trained persons were appointed as the enquiry officer and presenting officer respectively and the request of the workman to allow him to be represented by an advocate was rightly rejected by the enquiry officer, since there was no such provision in the certified standing orders and the workman did not have any legal right to seek permission to utilize the services of a lawyer or an employee of other department situated at Nagpur and in the enquiry, witnesses were examined in presence of the workman and he was given due opportunities to cross-examine them, but the workman by adopting an uncooperative attitude and to delay the proceedings did not utilize the opportunities and time and again, he was informed that he could be allowed to be represented and defended by a representative as has been provided in the certified standing orders and despite the same, the workman was harping every now and then on his request to engage an outsider or an advocate to defend him in the enquiry and the enquiry officer could not wait indefinitely and having found the workman mis-utilising the opportunities given to him to cross-examine the witnesses and was not willing to produce his witnesses and documents in his defence, concluded the enquiry and on the request of the workman, the enquiry was conducted in Hindi and the copies of the proceedings of the enquiry, which was conducted in English were translated in Hindi and handed over to the workman and the enquiry officer, on the basis of the evidence and materials on record, recorded his findings and came to the conclusion that the charges levelled against the workman to have been proved and the enquiry officer submitted his report and the record of the enquiry to the General Manager, West Zone of the corporation and a copy of the report of the enquiry was sent to the workman under letter dated 18.02.1997 and he was called upon to submit his reply within 15 days of the date of receipt of said letter and the workman submitted his reply on 18.03.1997 and the disciplinary authority after examining the record of enquiry and applying independent mind and taking into consideration the reply submitted by the workman, agreed with the findings of the enquiry officer and though the disciplinary authority found the charges proved against the workman were quite serious, warranting the major punishment of dismissal, to give an opportunity to the workman to reform himself, imposed the lenient punishment of demotion of the workman to general mazdoor in grade (M-03), without reduction in his salary, by order dated 31.03.1997 and the appellate authority after

consideration of the appeal preferred by the workman modified the punishment and imposed the punishment of reduction to lower stage in scale as per clause 32 (d) of the certified standing orders and its action is perfect, legal and justified and cannot be faulted on any ground whatsoever and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 09.10.2013, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that a bare perusal of the enquiry report dated 24.03.1995 submitted by the enquiry officer would show that the findings are perverse and in the case, the charge sheet was submitted after a period of four months of the alleged commission of misconducts by the workman and before issuing of the charge sheet, no explanation was called for from the workman and normally, in case of riotous or disorderly behaviur, immediate action is taken to charge sheet the workman, but the management in this instant case preferred to wait for 4 months and this delay itself smacks of vindictiveness and malafide intention on the part of some officers of the management and no documents was produced by the management during the course of the departmental enquiry to prove the charges levelled against the workman and in absence of any documentary evidence, the charge is not sustainable and the findings of the enquiry officer are perverse and the enquiry officer without analyzing the evidence of the witnesses examined by the management and without giving any reason, abruptly concluded that the charges levelled against the workman were proved and on that score also, the findings are perverse and past record of the workman was not considered by the disciplinary authority, while awarding the penalty and the penalty of reduction of lower stage in the scale imposed against the workman is harsh and disproportionate to the gravity of misconduct and the punishment imposed is not prescribed in the model standing orders and as such, the same is illegal and the order of punishment imposed against the workman is required to be quashed and set aside.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1963 II LLJ- 452 (Khardah & Co. Ltd. Vs. Workmen) of AIR 1985 SC. 1121 (Anil Kumar Vs. Presiding Officer).

6. In the written notes of argument, it was submitted by the learned advocate for the party no. 1 that by order dated 09.10.2013, it has already been held by this Tribunal that the departmental enquiry conducted against the workman to be fair, proper and in accordance with the principles of natural justice and the enquiry officer in his report dated 07.02.1997 has dealt with the charges levelled against the workman point wise and in detail by referring to various exhibited documents and the findings of the enquiry officer are based on the oral and documentary evidence that was placed before him during the enquiry and the charges which were levelled and proved against the workman were extremely serious and the disciplinary authority taking into consideration all the pros and cons of the matter, the charges of misconduct levelled against the workman and the past service records of the workman and all other aggravating and exenterating circumstances of the case, came to a conclusion that it was a fit case, where the workman deserved to be discharged/dismissed from service, but to give one more opportunity to the workman to reform himself, decided to impose the penalty of demotion from the position of heavy vehicle driver grade M-07 to the position of General worker grade M-03 at Khapri LPG plant,without reduction in' his salary by order dated 31.03.1997 and the workman approached the Appellate Authority and the Appellant authority took a lenient view in favour of the workman and modified the order of punishment of demotion of the workman and imposed the punishment of "reduction of lower stage in scale" as per clause 32 (d) of certified standing orders applicable to the workman.

It was further submitted by the learned advocate for the party no.1 that in the entire statement of claim, the workman has not challenged the perversity of the findings of the enquiry officer and in absence of any pleading in the statement of claim, it is not open for the workman to call in question, the findings of the enquiry officer and the order of punishment and the workman is not entitled to any relief.

In support of the submissions, the learned advocate for the party no.1 placed reliance on the decisions reported in (1979) 3 SCC-371 (Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another), 2007 (1) Born LC-255 (SC) (Tata Engineering & Locomotive Co. ltd. Vs. N.K. Singh), 2007 (1) Born LC-315 (Born) (AFL Private Ltd Vs. S.J. Rajappa), 2007 LLR-245 (Punjab & Haryana High Court) (Jarnail Singh Vs. Presiding Officer, Labour Court, Patiala) and 2006 (4) LLN 550 (Bombay) (Brihanmumbai Municipal Corporation, Mumbai Vs. S.R. Mishra).

7. Before delving into the merit of the matters, I think it proper to mention the principles enunciated by the Hon 'ble Apex Court in the two decisions cited by the learned advocate for the workman.

The Hon'ble Apex Court in the decision reported in 1963 II LLJ-452 (Supra) have held that :—

"If industrial adjudication attaches importance to domestic enquires and the conclusion reached at the end of such enquires, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer. It may be that the enquiry officer need not write a very long or elaborate report, but since his findings are likely to lead to the dismissal of the employee, it is his duty to' record clearly and precisely his conclusions and to indicate briefly his reasons for reaching the said conclusion, unless such a course is adopted, it would be difficult for the industrial tribunal to decide whether the approach adopted by the enquiry officer was basically erroneous or whether his conclusion were perverse."

The Hon'ble Apex Court in the decision reported in AIR 1985 SC. 1121 (Supra) have held that :—"Disciplinary enquiry-Report of enquiry officer must be a reasoned one."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, now, the present case in hand is to be considered.

8. The first submission made by the learned advocate for the Workman is that the findings of the enquiry officer are perverse, as the enquiry officer without analyzing the evidence of the witnesses examined in the enquiry and without assigning any reason for reaching such conclusions has given his findings.

However, on perusal of the materials on the record of the departmental enquiry including the enquiry report submitted by the enquiry officer, it is found that the findings of the enquiry officer are not perverse. The enquiry officer has dealt with the charges chronologically and has referred to the evidence adduced in the enquiry. It is to be mentioned here that the evidence of the witnesses examined by the management in the departmental enquiry was not challenged by the workman. Hence, I find no force in the contention raised by the learned advocate for the workman in this count.

9. The next contention raised by the learned advocate for the workman that the punishment imposed against the workman is not prescribed in the standing orders and as such the same is illegal. It is to be mentioned that punishment to "reduction to lower stage in scale" has been imposed against the workman.

Clause 32 of the standing orders applicable to the workman prescribes the punishment for misconduct and clause 32(d) prescribes the punishment of "Reduction to a lower stage in the Scale".

The Appellate authority, who modified the order of punishment imposed against the workman by the disciplinary authority and imposed the punishment of "Reduction to a lower Stage in the scale", in the order itself has mentioned the clause under which the punishment was imposed. Hence, it is not correct to say that the punishment imposed against the workman has not been prescribed in the standing order.

10. So far the proportionality of punishment is concerned, it is found that while imposing the punishment, the past service record of the workman was considered. It is also found that commission of grave misconducts has been proved against the workman in a properly conducted departmental enquiry. It is also found that the punishing authority took a lenient view against the workman while imposing the punishment . So, the punishment imposed against the workman cannot be said to be shockingly disproportionate. So, there is no scope to interfere with the punishment. Hence, it is ordered:-—

ORDER

The action of the management of Hindustan Petroleum Corpn. Ltd., imposing the punishment of reduction of lower stage in scale to Sh. Surendra Pilluram Yadav w.e.f. 19.12.97 is justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 जनवरी, 2014

का.आ. 604.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 7/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था ।

[सं. एल-30012/31/2010-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th January , 2014

S.O. 604.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/ 2012) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bharat Petroleum Corporation Limited and their workman, which was received by the Central Government on 27-1-2014.

[No. L-30012/31/2010-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 16th December, 2013

Present: K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 7/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub- section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Petroleum Corporation Ltd. and their workman)

BETWEEN

Sri M. Raveendran : 1st Party/Petitioner Union

AND

1. The Dy. General Manager (HRS) South M/s. Bharat Petroleum Corpn. Ltd. No. 1, Ranganathan Garden, Anna Nagar (W), Chennai-40 : 2nd Party/1st Respondent

2. The Personnel Manager BPCL, 7, Kodambakkam High Road Chennai-600034 : 2nd Party/2nd Respondent

3. The Territory Manager (LPG) : BPCL, Coimbatore. : 2nd Party/3rd Respondent

Appearance :

For the 1st Party/Petitioner : Sri G.B. Saravanabhavan, Advocate

For the 1st Party/1st, 2nd & 3rd Respondent : M/s T.S. Gopalan & Co., Advocates

A.WARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-30012/31/2010-IR(M) dated 16.01.20~2 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of BPCL in terminating the services of Sri M. Raveendran w.e.f. 07.01.2013 is just and legal? To what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 7/2012 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The case that is put forth in the Claim Statement by the petitioner in brief is this:

The petitioner was appointed as Sweeper-cum-Scavenger in the LPG Plant of the Respondents at Coimbatore in 1984. Later he was promoted as Operator (F). The petitioner was doing his work diligently and sincerely. On 26.02.2011, a Show Cause Notice was issued to the petitioner asking him to show cause for unauthorized absence from work. Though the petitioner had given an explanation the Management was not satisfied with this and had initiated disciplinary proceedings against the petitioner. On conduct of the enquiry, the Enquiry Officer has found that the charge against the petitioner is proved. The petitioner had gone for treatment due to psychotic problems at Coimbatore Medical College Hospital from 25.05.2002 to 03.06.2002. After this, he had attended the job till the date of his dismissal. The petitioner had given a letter to the Management requesting to reinstate him. He has sent a petition for revocation of his termination also. The petitioner had been undergoing treatment for mental illness till 2009. Now he is cured of the illness. The delay in raising the dispute is not willful. The termination of the petitioner is illegal. In any case, the punishment imposed on the petitioner is disproportionate. The petitioner is entitled to be reinstated into service with full back wages, continuity of service and all other benefits.

4. The Respondents have filed a joint Counter Statement contending as follows.

The petitioner was terminated from service by order dated 23.12.2002. He has accepted the order on 07.01.2003. He has received his gratuity and also his group savings in insurance. Having acquiesced with the cessation of his employment, the petitioner is not entitled to question this. Disciplinary action is usually initiated against a workman in case of absence without leave. The petitioner was a chronic absentee between 1989 and 1994. He was unauthorizedly absent for several days. During this period for several days. Since he was continuously absent in 1995 disciplinary action was taken against him and punishment of demotion by one grade with reduction in salary in three stages was imposed on him. He was unauthorizedly absent for more than 287 days from 1996 to 1997 and he was again given punishment of demotion from the post of Operator (F) in Grade-II to the post of Operator-V in Grade-I with reduction in salary in three stages. He had been unauthorizedly absent between 1997 and 2000 also. Charge Sheet was issued against him for his unauthorized absence of 360 days. After enquiry the petitioner was dismissed from service. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of the petitioner examined as WW1 and documents marked as Ex.W1 to Ex.W13 and Ex. M1 to Ex.M2.

6. **The points for consideration are :**

(i) Whether the action of the Management in terminating the service of the petitioner has any justification?

(ii) What is the relief, if any, to which the petitioner is entitled?

The Points

7. The petitioner was admittedly an employee of the Bharat Petroleum Ltd. and was working at its Coimbatore LPG Plant Initially he was appointed as Sweeper-cum-Scavenger, in 1984. At the time of his dismissal from service he was working as Operator (F).

8. The Management had initiated proceedings against the petitioner for his unauthorized absence from work for 360.5 days between January 1998 and November 2001. On conducting the enquiry, the charge against the petitioner was found established and it is accordingly the petitioner was terminated from service.

9. There is no case for the petitioner that the enquiry conducted against him by the Management was not in a fair and proper manner. The documents pertaining to the enquiry conducted against the petitioner are produced by him itself. Ex.W6 is the Charge Sheet issued by the Management stating that he was unauthorizedly remaining absent for more than 350 days which amounts to misconduct. Ex.W7 and Ex.W8 are the explanations submitted by the petitioner. Ex.W9 is the proceedings of the domestic enquiry. It could be seen from this that the petitioner had participated in the enquiry and had pleaded guilty of the charge. On pleading guilty, he has submitted to the Enquiry Officer that in future he would not take a single day's leave without permission and had sought to be forgiven for his past misconduct. In enquiry the Management has produced the caution letter sent to the petitioner because of his unauthorized absence and advised him to be regular in his duty. The Show Cause Notice that has been issued for unauthorized absence during October 1997 to November 2000 also has been produced. On the basis of the documents and on the basis of the admission by the petitioner, the Enquiry Officer has found the petitioner guilty of the misconduct of unauthorized absence and had given a report accordingly.

10. Even now there is no case for the petitioner that the case of the Management that he was unauthorizedly absent during the period mentioned in the Charge Sheet served on him is not correct. What the petitioner has stated in the affidavit filed by him is that he was mentally ill and was undergoing treatment. It could be seen from the documents produced by the Respondents that innumerable letters were served on the petitioner because of his unauthorized absence. Exs.M7 to Ex.M17 are all such letters served on the petitioner during the period from 1998 to 2001. It could be seen that even by Ex.M6, the letter dated 18.08.2001, while reminding the petitioner of his absence from 31.07.2001, the petitioner was asked to report for duty immediately with a satisfactory explanation for the unauthorized absence. There is no case for the petitioner that these letters produced by the Respondents were not served on him. In Ex.W13, the mercy petition given by the petitioner to the Management after termination, the case of the petitioner is that he happened to be addicted to alcohol and it is because of this he was absent and that opportunity should be given to him to correct and improve himself. Thus, there is an admission by the petitioner himself that he was ignoring his duty and was seeking to quench his thirst for liquor even on duty days and this is why he failed to attend duty. Though there is a case for the petitioner that he was having mental illness this is not at all sought to be established.

11. It is not for the first time that the petitioner was unauthorizedly absent. He was a habitual absentee and the Management had proceeded against him for this reason earlier also on more than one occasion. As seen from Ex.M19, by order dated 04.09.1997 he was awarded punishment of demotion from Grade-III to Grade-II with reduction in salary by three stages for unauthorized absence for 84 days in the year 1995. As seen from Ex.M20, in spite of his earlier punishment the petitioner had become absent again unauthorizedly for 287 days in between January 1996 and September 1997 and he was awarded punishment of demotion from Grade-II to Grade-I with reduction in salary by three stages. The Management had given the petitioner sufficient opportunity earlier by issuing several letters to him asking him to be punctual in duty and subsequently by imposing not so severe punishments for unauthorized absence. Yet the petitioner had not taken it upon him to mend his ways and be regular in work. A worker who is so irresponsible will certainly be a burden to the establishment. It is only natural that the Management thought it prudent to remove him from service. The counsel for the Respondent has referred to the decision of the Apex Court in L&T KOMATSU LTD. VS. N. UDAYA KUMAR reported in 2008 I LLJ 849 where it was held that habitual absenteeism is a gross violation of discipline. The Apex Court had reversed the order of the Labour Court and the High Court directing the reinstatement of the worker and had restored the order of termination passed by the disciplinary authority. Going by the above dictum of the Supreme Court dismissal of the petitioner is in order.

12. I n the present case, there is one more reason for rejecting the case of the petitioner. The termination of the petitioner from service was on 23.12.2002. After receiving the dismissal order he has collected his gratuity and also his provident fund dues, as admitted by him during his cross-examination. What he has stated in his proof affidavit is that he was in mental agony for 5 years and was under treatment and that is why there was delay in raising the dispute. In fact the dispute is raised with a delay of more

than 5 years. Ex. M31, the report by the Assistant Labour Commissioner shows that the dispute was actually raised on 12.10.2009. The case of the petitioner that he was undergoing treatment for illness and was not in a position to pursue the case and his own admission that he had received gratuity and provident fund dues after termination from service are contradictory. There is no acceptable explanation for the delay in raising the dispute. The Apex Court has held (2005 I LLJ 297) that even though no time limit is prescribed for raising industrial dispute, the conduct of the concerned worker in approaching the Labour Court with huge delay is a factor to be taken into account while considering the case. There was no justification for the petitioner to wait for more than 5 years to raise the dispute. This also disentitles him for any relief. I find that the petitioner is not entitled to any relief.

In the result the reference is answered against the petitioner.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 16th December, 2013)

K. P. PRASANNA KUMARI, PresidingOfficer

Witnesses Examined:

For the 1st Party/Petitioner : WW1. Sri M. Raveendran

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	02.05.1984	Appointment order
Ex.W2	13.05.1985	Confirmation
Ex.W3	01.04.1992	Revised Salary
Ex.W4	26.02.2001	Letter issued by the Management
Ex.W5	01.03.2001	Explanation given by the petitioner
Ex.W6	17.12.2001	Charge sheet issued by the Management
Ex.W7	12.01.2002	Explanation submitted by the petitioner
Ex.W8	14.02.2002	Explanation submitted by the petitioner
Ex.W9	14.02.2002	Proceedings of the domestic enquiry
Ex.W10	26.04.2002	Report of Enquiry Officer
Ex.W11	25.05.2002	Discharge summary
Ex.W12	18.12.2002	Dismissal Order
Ex.W13	27.05.2004	Mercy Petition

On the management's side :

Ex. No.	Date	Description
Ex.M1	17.12.2001	Charge Sheet issued to the petitioner
Ex.M2	12.01.2002	Examination of petitioner
Ex.M3	22.01.2002	Appointment of Enquiry Officer
Ex.M4	22.01.2002	Appointment of Presenting Officer
Ex.M5	29.08.2001	Letter from the Respondent of the petitioner regarding his unauthorized absence
Ex.M6	18.08.2001	Letter from the Respondent to the petitioner regarding his unauthorized absence and advising to report with his explanation
Ex.M7	27.04.2001	Letter from the Respondent to the petitioner regarding his unauthorized absence
Ex.M8	16.02.1999	Letter from the Respondent to the petitioner regarding his unauthorized absence
Ex.M9	05.02.1999	Letter from the Respondent to the petitioner regarding his unauthorized absence
Ex.M10	05.11.1999	Letter from the Respondent to the petitioner regarding his unauthorized absence
Ex.M11	16.11.1998	Letter from the Respondent to the petitioner regarding his unauthorized absence
Ex.M12	28.10.1998	Letter from the Respondent to the petitioner regarding his unauthorized absence
Ex.M13	24.10.1998	Letter from the Respondent to the petitioner regarding his unauthorized absence and advising to report for duty.
Ex.M14	16.10.1998	Letter from the Respondent to the petitioner regarding his unauthorized absence and advising to report for duty etc.
Ex.M15	08.09.1998	Letter from the Respondent to the petitioner regarding his unauthorized absence and advising to report for duty etc.

Ex.M16	10.09.1998	Letter from the respondent to the petitioner regarding his unauthorized absence and advising him to submit his explanation
Ex.M17	26.02.2001	Show Cause Notice for unauthorized absence between October 1997 to November 2002 - 287 days
Ex.M18	14.05.2001	"Cautioned" to be regular to attend to work in respect of Show Cause Notice dated 26.02.2001
Ex.M19	04.09.1997	Order awarding punishment of demotion from Grade 3 to Grade 2 with reduction in salary by three stages for unauthorized absence of 84 days between February 1995 and December 1995 in reference to Charge Sheet dated 31.01.1960
Ex.M20	21.09.1998	Order awarding punishment of demotion from Grade II to Grade I with reduction in salary by three stages for unauthorized absence of 287 days between January 1996 and September 1997 - in reference to charge sheet dated 13.11.1997
Ex.M21	23.12.2002	Letter from respondent enclosing order dated 18.12.2002 dismissing the workman from employment
Ex.M22	24.02.2003	Internal Memo from Dy. Manager (ED) (South) enclosing Gratuity Receipt of the petitioner
Ex.M23	23.01.2003	Letter from Dy. Manager (ED) (South) enclosing Form 19 under EPF Act for settlement of PF Account
Ex.M24	04.03.2003	Letter from Manager (Finance) of respondent to EPF Organization enclosing Form 19, Form 3A to effect full and final settlement of dues to the petitioner
Ex.M25	25.02.2003	Letter from respondent to petitioner enclosing Demand Draft dated 21.02.2003 towards settlement of leave encashment
Ex.M26	03.06.2003	Letter from respondent to petitioner enclosing cheque towards GSLI Final Settlement
Ex.M27	21.10.2009	Notice from Asstt. Labour Commissioner (Central) to parties enclosing 2A petition to the petitioner
Ex.M28	17.11.2009	Reply of the respondent to Asstt. Labour Commissioner (Central) to the 2A petition to the petitioner
Ex.M29	18.12.2009	Additional reply/submission of the respondent to Asstt. Labour Commissioner (Central), Chennai
Ex.M30	07.07.2010	Reply of respondent to Asstt. Labour Commissioner (Central) on the rejoinder of the petitioner
Ex.M31	29.10.2010	Conciliation failure report of the Asstt. Labour Commissioner (Central), Madurai
Ex.M32	-	Standing Orders of the Respondent.

नई दिल्ली, 30 जनवरी, 2014

का.आ. 605.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बिहार स्टेट मिनरल डेवलपमेंट कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, धनबाद के पंचाट (संदर्भ संख्या 32/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था ।

[सं. एल-29012/80/91-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 30th January , 2014

S.O. 605.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/ 1992) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bihar State Mineral Development Corporation Limited and their workman, which was received by the Central Government on 27-1-2014.

[No. L-29012/80/91-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 DHANBAD

Reference: No. 32/ 1992

In the matter of reference U/s l0(1) (d) (2A) of I.D. Act, 1947.

Parties: Employer in relation to the management of B.S.M.D.C

AND

Their workmen

Present: Sri R.K. Saran , Presiding Officer.

Appearances:

For the Employers : None

For the workman. : None

State: Jharkhand.

Industry : Coal
Dated 16-12-2013

AWARD

By order No. L-29012/80/91-IR (Misc.) dated 07-04-92, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (1) and sub- section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the retirement of Shri Bidya Rai, W.W. I, Pesra Mine and Shri Banarashi Tiwary, Mines Manager, Suggi Mica Mine, w.e.f . 19.4.91 and 23.4.91 respectively by the management of M/s. Bihar State mineral Dev. Corporation Ltd. Justified ?" If not, to what relief both the workmen are entitled to?''

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence pass a No disputed Award is passed. Communicate to the Ministry.

R.K.SARAN , Presiding Officer

नई दिल्ली, 30 जनवरी, 2014

का.आ. 606.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिएण्टल इन्शुरन्स कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1257/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था ।

[सं. एल-17012/12/2005-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 30th January , 2014

S.O. 606.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1257/ 2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Oriental Insurance Corporation Limited and their workman, which was received by the Central Government on 27-1-2014.

[No. L-17012/12/2005-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer.

Case No. I. D. No.1257 /2006

Registered on 14.3.2006

Sh. Jagir Singh, S/o Sh. Sampuran Singh,
R/o Village Ugara, P.O. Bada Tehsil,
Ambala. ....Petitioner

Versus

Senior General Secretary,
M/s Oriental Insurance Corporation Limited,
Divisional Office, Ambala Cantt,
Ambala. ...Respondents

APPEARANCES

For the workman : Sh. R.P. Rana, Advocate

For the Management : Sh. N.K. Zakhmi, Advocate

AWARD

Passed on 13 - 11- 2013

Central Government vide Notification No. L-17012/ 12/2005-IR(M) Dated 27.2.2006, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as (Act) has referred the following Industrial dispute for adjudication to the Tribunal :

"Whether the action of the management of Oriental Insurance Co. Ambala in terminating the services of Sh. Jagir Singh S/o Sh. Sampuran Singh, Ex-Waterman-cum-Peon w.e.f. 28-12-2001 without any notice and payment of retrenchment compensation is illegal and unjustified? If so to what relief the

concerned workman is entitled to and from which date?"

In response to the notice the workman submitted statement of claim pleading that he joined the service as Waterman-cum-Peon with the respondent- management on 10.6.1998 who paid wages to him upto 28.12.2001. He also worked in the month of January 2001 but was not paid for this period. His services have been terminated without complying the provisions of Section 25F, G and H of the Act. That Jeet Singh who was junior to him was retained in service whereas Jarnail Singh and Sohan Singh were engaged after terminating his services. That his termination being against the provisions of law is illegal and void, and he is entitled to be reinstated in service with full back wages and continuity of service.

Respondent-management filed written reply pleading that the workman was engaged for a specific period and for a specific work and on purely daily wage basis and after the expiry of the contractual period, further contract was not renewed. That he did not work continuously for 240 days and he worked as a Water Carrier from 10.6.1998 to 2.9.1998 for 85 days. He was again engaged in July 1999 when he worked for 8 days. His services were again utilized from September 2001 to December 2001 for 58 days. Thus he was engaged depending upnn the work. The provisions of Section 25F, G and H are not applicable.

In support of his case workman appeared in the witness-box and filed his affidavit.

On the other hand the management has examined Sh. Anil Relhan who filed his affidavit reiterating the case as stated in the written statement.

I have heard learned counsel for the parties and perused the file carefully.

It was argued by learned counsel for the workman that workman was employed as Waterman-cum-Peon on 10.6.1998 and he worked with the management up to 28.12.2001 and his services were terminated without issuance of any notice and payment of retrenchment compensation, as well the persons were appointed after the termination of service of workman and as such, there is violation of Section 25F and 25G of the Act and workman is entitled to be reinstated in service with all the benefits. He further contended that certain record was summoned from the management who failed to produce the same and therefore adverse inference be taken against the management to the effect that workman was in continuous service of the management. I have considered the contentions of the learned counsel for the workman.

It is the definite case of the workman that he joined the service as Waterman on 10.6.1998 through Employment Exchange. The respondent-management is an Insurance Company and it cannot be said that they employed the workman as its employee without following any procedure. The workmen are employed in the statutory bodies by following certain rules. It is nowhere the case of the workman that there was any advertisement or interview conducted and thereafter his selection was made. Again he did not place on record any appointment letter on the file to show the terms and conditions of service. It is the definite case of the management that he was employed only for three months and he worked from 10.6.1998 to 2.9.1998 and in view of this stand, it was expected from the workman to establish by leading cogent evidence that he was actually employed on regular basis by the management. It is again definite case of the management that workman was employed for a specific period and for a specific work on purely daily wage basis and he worked for 85 days from 10.6.1998 to 2.9.1998 and then for 8 days, in July 1999 and then for 58 days from September 2001 to December 2001. It has come in the cross-examination of the management-witness Sh. Anil Relhan that no attendance register is maintained regarding the daily wagers. When it is so, if the management did not produce the record the same is of no consequence. It was squarely on the workman to prove that he cotinuously worked with the management from 10.6.1998 to 18.12.2001 which he failed to prove by leading any cogent evidence on the file and in the circumstances it cannot be said that any provision of the act has been violated and the workman is not entitled to any relief. The reference is decided against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 30 जनवरी, 2014

का.आ. 607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, सांगली के पंचाट (संदर्भ संख्या 02/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था ।

[सं. एल-15025/2/2014-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th January , 2013

S.O. 607.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/ 2000) of the Industrial Tribunal-cum-Labour Court, Sangli now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Limited and their workman, which was received by the Central Government on 27-1-2014.

[No. L-15025/2/2014-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, LABOUR COURT, AT SANGLI

(Presided over by Shri S. R. Navandar)

Reference (I.D.A.) No. 2/2000

Adjudication Between

The General Manager
West Zone, Hindustan Petroleum
Corporation Limited, Richardon &
Cruddas Building, 2nd floor; Sir.J.J. Road,
Bhaikhala (Byculla) Mumbai. ...1st Party

And

Shri. Vasant Appasaheb Khandekar,
Age :- Major, Occu :- Now Nil,
R/o. Malgaon, Tal- Miraj, Dist- Sangli. ...2nd Party

CLAIM :-

Reinstatement with continuity of service and full back wages of 2nd Party.

Shri. S.S. Shevade, Advocate for 1 st party.

Shri. K.D. Shinde, Advocate for 2nd Party .

AWARD

(Delivered on 12th day of February, 2013)

This is a reference made under Section-10 of the Industrial Disputes Act. (hereinafter referred to as the "Act").

(2) **Certain admitted facts are as follows :-—**

2nd party workman Vasant Khandekar was serving with the 1st party Company since 01/06/1988. He was charge- sheeted for misconduct of habitual absenteeism on 07/12/1993. On considering his explanation, dt. 16/12/1993 Domestic Enquiry was initiated against him and thereafter he has been dismissed from service on 16/08/1994. After dismissal the 2nd party workman had approached Conciliation Officer claiming reinstatement and full back wages. No settlement was arrived at in the conciliation proceeding and hence the reference has been forwarded to this court by Government.

(3) **Brief facts of the case of the 2nd party workman are as follows :—**

In the statement of claim Exh. U-2 the 2nd party workman has contended that the enquiry conducted against him was not fair and proper. He was not given sufficient opportunity to represent himself and to lead evidence in the domestic enquiry. The enquiry officer obtained his signature on already typed paper and treated it as his confession and recorded affirmative findings against the charges levelled against him. The 2nd party workman does not know english language and still the enquiry proceeding was held in english language. Representative of the 2nd party workman was not allowed to enter the premises where the enquiry was held and as such grave prejudice has been caused to the 2nd party workman.

(4) It is further alleged that the enquiry officer did not refer the contents of charge-sheet, his reply and the documents on record, that the documents which were not filed on record were referred by the enquiry officer and on that basis the findings were recorded which are perverse. There was no evidence to mark affirmative findings to the charges levelled in the enquiry and hence the enquiry as well as the findings of enquiry officer need to be quashed.

(5) The 2nd party workman on each and every incident of non-attendance had moved applications alongwith medical certificates as he was not well. Despite of that the period was treated as of unauthorized absence. After completing farce of enquiry the 2nd party has been dismissed from service for no good reasons. The number of days shown in the dismissal order given on 16/08/1994 were not mentioned in the charge- sheet and as such the dismissal order is illegal and bad in law. The punishment awarded to the 2nd party workman is shockingly disproportionate and unwarranted considering the alleged misconduct. It is therefore the 2nd party has prayed for reinstatement with continuity of service and full back wages.

(6) The 1st party company has resisted the c1aim by filing its Wri.tten Statement at Exh. C-2. It has specifically denied that any illegality has been committed in holding domestic enquiry of the 2nd party workman. It is further denied that the findings of enquiry officer are perverse or based on no evidence. According to the 1st party company the 2nd party workman was a case of habitual absenteeism. The enquiry was initiated against him on the report made by his Superior Officer. It is contended that the 2nd party workman was allowed representation through Union or any co-worker. However, despite of that he had pleaded guilty. As his plea was voluntary it was accept by the enquiry officer. It is further contended that the findings of enquiry officer are based firstly, upon the admission of guilt by the 2nd party workman and secondly, on the record available with the enquiry officer. It is further contended that the past record of the 2nd party workman was poor as he used to remain absent frequently without assigning any reason. As such there is no illegality either in the proceeding of enquiry or in the findings of the enquiry officer.

(7) It is further contended that no leave applications were submitted by the 2nd party workman nor any medical

certificate was produced by him to show that he was suffering from any illness. It is further contended that there was absolutely no reason for the 2nd party workman to remain absent from duty. The statements made by the 2nd party are thus contended to be false and frivolous. It is further contended that the 2nd party workman is a public undertaking and considering the nature of the duty of 2nd party it was expected on his part to be punctual in the duty. The habitual absenteeism on the part of the 2nd party workman is a serious misconduct for which the punishment of dismissal can only be said to be justified and proper. It cannot be said to be disproportionate or shockingly disproportionate. Hence, the 1st party corporation has prayed for dismissal of the reference.

(8) The preliminary issues of enquiry have been decided by the judgment dt. 10108/2012. It is found that the enquiry was proper and the findings of the enquiry officer are not perverse. Now the remaining issues are taken hereinafter for determination. I record my findings against for the reasons to follow:

	ISSUES	FINDINGS
(1)	Whether 2nd party entitled for reinstatement with continuity of service and full back wages? .	In the Negative
(2)	Does the 1st party prove the alleged misconduct of the 2nd party ?	In the affirmative.
(3)	Is the 2nd party entitled for the relief claimed ?	In the negative. .'
(4)	What order?	As per final order .

REASONS

(9) The parties have led no oral evidence after decision on the preliminary issues of enquiry. They have relied upon the enquiry papers filed on record.

(10) Heard learned advocate Mr. K. D. Shinde for the 2nd party workman and learned advocate Mr. S.S. Shevade for the 1st party company.

(11) As to issue No. 2 :—

While deciding preliminary Issues it has been observed that the findings of enquiry officer are legal and proper. The enquiry officer has held that the charge of willful absenteeism on the 2nd party workman has been duly proved. As such the alleged misconduct on the part of the 2nd party stand proved. The findings on the issues are now settled and hence I answer the issue No. 2 in the affirmative.

(12) As to issues No. 1 and 3 :—

As per Section-11-A of the Act this court is empowered to interfere with the sentence awarded by the Management if it is found that it is not just and proper having regard to the gravity of misconduct of the 2nd party' workman and other attending or mitigating circumstances. Learned advocate Mr. K. D. Shinde has vehemently argued that the 2nd party workman has been victimized by awarding punishment of dismissal only because the 2nd party was absent for some days that too due to illness. It is argued that the workman was serving with the 1st party corporation since year 1988 and his long standing service was put to an end for no good reasons by 16-08-1994. It is further argued that he must have given an opportunity by proposing any other punishment, which can, have suffice the purpose.

(13) In support of the contentions learned advocate Mr. Shinde has cited following judgments :

(1)	Syed Zaheer Hussain V/s. Union of India and Others.	:	1999 I, C.L.R. Page no.1014.
(2)	Shri Rajendra B. Oza V/s. Air India.	:	2002 III, C.L.R., Page no. 517.
(3)	Ahmedabad Municipal Transport Service V/s. Mohmad Salim J. Shaikh.	:	2004 LAB. IC., Page no. 3031.
(4)	Depot Manager, A.P.S.R.T.C. & Another V/s. V. Surender.	:	2008 LAB. IC., Page no. 3588.

The crux of the above judgments is that when it is found that the punishment awarded to the workman is shockingly disproportionate or grossly disproportionate the court is empowered to interfere with the same and to direct giving lesser punishment.

(14) Learned advocate Mr. S.S Shevade for the 1st party has argued that the misconduct of the 2nd party workman is of serious and grave nature, that the 1 st party is a public institute and when an employees of public institute remain absent it not only hampers the work of the institute but it affects economy of entire nation. He has cited following judgments in support of his contentions :

(1)	Bharat Forge Company Ltd., V/s. Uttam Manohar Nakate.	:	2005 I C.L.R., Page no. 533. S.C. .
(2)	Mahindra and Mahindra Ltd., V/s. N.B. Narawade.	:	2005 (I) Bom. LC. Page no. 733. S.C.
(3)	B.C. Chaturvedi V/s. Union of India and Others.	:	1996 (72) F.L.R. Page no. 316. S.C.

(4)	Damoh Panna Sagar Rural Regional Bank and Others V/s. Munna Lal Jain	:	2005 (104) F.L.R. Page no. 291. S. C.
(5)	M. D. Kawade and Another V/s. Mahindra Engineering & Chemical Products Ltd., Pune and Another.	:	2005 (85) F.L.R. Page no. 217 B.H.C.
(6)	Ratnakar Samuel Gaikwad V/s. J. G. Glass Industries Ltd., Pune and Another.	:	2002 I C.L.R., Page no. 590 B.H.C.
(7)	Delhi Transport Corporation V/s. Sardar Singh	:	2004 (102) F.L.R. Page no. 1031. S.C.
(8)	Larsen and Toubro Grahak Sahakari Sanstha Maryadeet, Bombay V/s. Tanaji Kashinath Vishwe and Others.	:	2006 (108) F.L.R.,Page no. 367 B.H.C.
(9)	L & T Komatsu Ltd. V/s. N. Udaykumar.	:	2008 I, C.L.R., Page no. 978. S.C.
(10)	Union of India and Others V/s. Bishamber Das Dogra.	:	(2010) 1 SCC (L&S) Page. no. 212. S. C.
(11)	Usha Breco Mazdoor Sangh V/s. Management of Usha Breco Ltd. and Another	:	2008 III, C.L.R, Page no. 85. S. C.

The sum and substance of the above judgments is that the court has to act within four corners of the provisions of the Act and when the punishment imposed by the employer is proportionate to the proved misconduct, there can be no interference by the court. In the judgment of Bharat Forge Company Limited (cited supra) it is observed that the court cannot interfere in punishment on irrational or extraneous factors and certainly not on compassionate ground. In case of M.D. Kawade (cited supra) Hon'ble Bench of our High Court has observed that a workman must be always "at work" and not "away from work". The expectations of the Hon'ble Bench is noted in the words that our culture should be "work culture" .

(15) In nutshell the court has to go through the facts of the case and to see as to whether the misconduct of the workman was of grave and serious nature and whether the punishment awarded to him was justifiable or not. Unless it is highly disproportionate or unjust, cannot be interfered with.

(16) In the present case the 2nd party workman did not attend duty for months of June and July-1993. Then again he had not appeared in August, November and December- 1993. He remained absent without prior permission and even without information. Neither in the enquiry nor during adjudication of the dispute before this court he has put forth any reason, muchless plausible reason, for such a long absenteeism though it is stated that he was suffering from illness for some of that period no evidence has been put forth about the same. No nature of illness has been disclosed nor medical certificate has been placed on record. As such the 2nd party workman is having no explanation for his long absenteeism.

(17) When an employee remains absent continuously for months together, he is a burden to the establishment. Apart from that, the 1st party is a public undertaking and therefore the employees of the public undertaking are expected to be more conscious of their duties. It is not only in the interest of the establishment but in the interest of the nation discipline must be observed. The case of 2nd party workman is of habitual absenteeism for continuous long period. He was absent for 70 days in year 1992 and more than that in the subsequent year. When there is such a long absenteeism, the misconduct can be said to be very serious nature. In case of serious and grave nature of misconduct punishment of dismissal cannot be said to be disproportionate or unjust. The employer is not expected to continue such an employee on roll who avoids duty for no good reason.

(18) From the above observations it is clear that having regard to the misconduct. of the 2nd party workman punishment of dismissal awarded to him cannot be said to be unjust or disproportionate to the proved misconduct. Hence, I find that this court has no scope to interfere with the same. It is therefore I answer the issues No. 1 and 3 in the negative and proceed to pass the following order.

ORDER

1. The reference is hereby answered in the negative.

Sangli.
Date :-12-02-2013.

S. R. NAVANDAR, Presiding Officer

नई दिल्ली, 30 जनवरी, 2014

का.आ. 608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एच बी पी कंपनी लिमिटेड एवं इंडियन आयल कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, पुणे के पंचाट (संदर्भ संख्या 6/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था ।

[सं. एल-30011/26/2007-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 30th January, 2014

S.O. 608.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/ 2007) of the Central Government Industrial Tribunal-cum-Labour Court, Pune now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of HBP Company Limited/Indian Oil Corporation Limited and their workman, which was received by the Central Government on 27-1-2014.

[No. L-30011/26/2007-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE INDUSTRIAL TRIBUNAL MAHARASHTRA AT PUNE

Reference (IT) No. 6/2007

1. IBP Company Limited
4, Aditi Commerce Centre,
5th Floor, 2406 East Street,
Pune-411 001

2. Indian Oil Corporation Limited
Loni, Taluka Haveli,
Dist. Pune ... First Parties

Vs.

Shri Shivlingappa H. Roli
Atre Vasti, Loni Station
Pune, Solapur Road, Pune ... Second Party

CORAM : Shri. D..H. Deshmukh, Presiding Officer.

APPEARANCES:

Shri. Vaidya, Advocate for First Party.

Shri. Gopale, Advocate for Second Party.

AWARD

(Date : 17-07-2013)

This reference made by Government of India, Ministry of Labour, is for the adjudication of the dispute between Shri Shivlingappa H. Roli (the Second Party), and Senior Divisional Manager, IBP Company Limited (the First Party ernployer). The dispute pertains to termination of services of the Second Party).

2. According to the Second Party, he was employed with the First Party after an interview, as a helper in 1990. The monthly wages were Rs. 6000. The First Party is' engaged in the business of distribution of petroleum oil. It is contended that the Second Party was not getting wages, and other benefits including leave. The Second Party demanded those benefits, which annoyed the Manager of the First Party, and the Manager started harassing the Second Party. The Second Party had allegedly met with an accident while on duty, but no compensation was paid to him. The Second Party was removed fron services orally on 27.5.2000 without complying with the provisions of law. It is contended that the Second Party had worked for 240 days. Inspite of continuous service, his services were terminated. The First Party did not want to give to the Second Party the benefits of permanent employment. The Second Party now wants reinstatement with continuity of service and full back wages ete. It is also contended that the Second Party tried for alternative employment but could not get any.

3. The First Party No. 2 has filed written statement at Exh. C-4 resisting the claim. It is contended that the First Party comes directly under the Ministry of Natural Gas and Petroleum, and the rules and regulations framed by the Government in respect of recruitment are binding on the First Party. The First Party No. l merged with First Party no. 2 w.e.f. 2.5.2007, and therefore, according to First Party No. 2, the First Party No. l does not exists. It is contended that the Second Party was engaged by the erstwhile company as a casual labour during September 1994 to May 2000, as and when required. The First Party denied that the Second Party was employed in accordance with the rules, or had worked for 240 days•as alleged, It is contended that the Second Party is not an employee appointed as per rules. It is denied that the Second Party submitted an application for continuation of the employment. He has never completed 240 days. The ernployment of the Second Party came to an end naturally due to casualness of the work.

4. The casual employment according to the First Party, does not give any right. In May 2000, the Second Party was engaged for 14 days as a cleaner on a lorry driven by one Bhagwan Wagaskar. The lorry met with an accidcnt on 27-5-2000, in which the driver died and the Second Party sustained injuries. The First Party on humanitarian grounds extended medical benefits. It is contended that the lorry in question was damaged and it was sent to another depot as there was no driver. Consequently, the Second Party was also discontinued, Denying all adverse allegations the First Party has prayed for rejection of the claim.

5. The issues framed by my learned predecessor, and my findings thereon are as under :

	ISSUES	FINDINGS
1.	Does the Second Party workman proves that he had been in the continuous employment of thc First Party since 1990 as a "Helper" on the last drawn monthly salary of Rs. 6000 upto 27.5.2000, and completed 240 days continuous services in a calendar year?	Yes

2.	Does the Second Party proves that his services were orally terminated by the First Party w.e.f. 27-5-2000 and termination of his services is unjustifed and without following due process of law?	Yes
3.	Does the Second Party proves that he is entitled to the relief of reinstatement with continuity of service and full back wages with attendent benefits?	Yes, partly
4.	What award/order	As per final order.

REASONS

6. ISSUES NO. 1 TO 3: Only the Second Party workman has adduced oral evidence. The First Party has been absent. The Second Party had called for certain documents, and this Tribunal had directed the First Party to produce the application for employment submitted by the Second Party, and the attendance-cum-wage register for the period from 1998 to 2000. The order further clarified that if' the documents are not produced, an affidavit should be filed stating the reasons for non-production. Needless to mention that neither the documents are produced nor any affidavit is filed by the First Party.

7. The Second party in his evidence has stated that he joined the First Party No. l in 1990 as a helper, and he worked continuously, having put in 240 days service in each year. He was not given any benefits of permanancy or overtime wages. He was also, not paid any compensation for the injuries sustained during accident. The Ftrst Party had 500 employees. The services were orally terminated on 27.5.2000 without giving any notice. The Second Party was not paid legal dues or compensation. Juniors to the Second Party were continued ill service. After the Second party raised dispute, the First Party failed to settle the same. The Second Party has stated that contents of statment of claim are correct, but the contents of written statement are wrong. It is also stated that after termination, the Second Party tried for alternative employment; but he could not get any job.

8. The entire evidence is unchallenged, as the First Parties have been absent. The First Party has not led any evidence.

9. Having regard to the unchallenged and unrebutted evidence of the Second party, and considering the submissions made by Mr. Gopale Advocate, I find that the Second Party workman was working continuously from 1990 till 27.5.2000, and his services were orally terminated. The services rendered by the Second Party were continuous as contemplated under law. Before terminating the services neither any notice was given, nor notice pay was paid. Retrenchment compensation was also not paid. The Second Party has also stated that he was removed because he demanded certain benefits. Juniors were also retained. All this clearly indicates that the termination was in breach of provisions of section 25-F and 25-G of the Industrial Disputes Act, 1947. The termination was illegaL The termination was unjustified also.

10. The First Party No. 2 in its written statement has stated that the ernployment of the Second Party was purely casual, and lastly, his engagement was as a cleaner for 14 days etc. The contentions in the written statement have been denied by the Second Party, on oath, and the First Parties have not substantiated those contentions. The First Party no.1 is undisputedly merged in First Party No. 2.

11. The Second Party wants reinstatement with all consequential benefits. The reference was made by the Government on 9.7.2007. It is not clear as to when the dispute was raised. The termination was on 27.5.2000. It. appears that the dispute was raised belatedly, There is therefore, no justification in awarding back wages for' the period from the date of termination till the date of reference. Even for the subsequent period, back wages should be granted, but not 100%. The Second Party has stated that he is unemployed since the year 2000, and has got no job despite efforts. It is improbable a person would remain unemployed for more than 13 years.. The ends of justice would be met if 50% back wages are awarded for the period after 9.7.2007. The Second Party has stated that his wages were Rs. 6000 per month. The back wages will have to be worked out considering the wages as Rs. 6000 or the minimum wages, whichever is higher. Hence, the following order :

ORDER

1. The First Party No. 2 namely Indian Oil Corporation Limited, shall reinstate Second Party - Shri Shivalingappa H. Roli, in his usual position with continuity of service from 27.5.2000. The said First Party shall pay to the Second Party 50% of the back wages w.e.f 9.7.2007.

2. No order as to costs.

Pune

Date : 17.07.2013

D. H. DESHMUKH, Presiding Officer

नई दिल्ली, 30 जनवरी, 2014

का.आ. 609.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ट्रिनिटी कमर्शियल प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 39/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था ।

[सं. एल-29012/11/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th January , 2014

S.O. 609.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2013) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s.Trinity Commercial Pvt. Ltd. and their workmen, which was received by the Central Government on 27-1-2014.

[No. L-29012/11/2013-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 39/2013

No. L-29012/11/2013 - IR (M), dated 25.4.2013

Date of Passing Order - 10th October, 2013

Between:

M/s. Trinity Commercial Pvt. Ltd.,
Contractor of M/s. Serajuddin & Co.
Balda Block Iron Mines,
At./Po. Baneikela, Via. Joda,
Dist. Keonjhar, Odisha ....1st Party-Management

(And)

Smt. Radha Munda,
W/o. Kandra Munda,
At./Po. Basira, Via. Joda,
Dist. Keonjhar, Odisha ....2nd Party-Workman

Appearances :

None ....For the 1st Party-Management.

None ....For the 2nd Party-Workman.

ORDER

Case taken up. None of the parties has responded. No statement of claim has been filed by the 2nd Party-workman despite sending notices through ordinary as well as registered post, which although have been received back un-served, but the disputant-workman herself has to take proper steps for further prosecution of her case. She seems to have taken no care of her case despite four dates having been fixed in the case. In expectation of filing of statement of claim for further prosecuting the case no further time can be allowed as there is no way left to search out the 2nd Party-workman and persuade her to appear and file her statement of claim.

Under these circumstances it will be a futile attempt to keep the case pending for long. Therefore the reference is liable to be returned to the Government of India in the concerned Ministry for necessary action at its end.

The reference is returned to the Government for necessary action at its end.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 जनवरी, 2014

का.आ. 610.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ईस्ट इंडिया मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 14/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-1-2014 को प्राप्त हुआ था ।

[सं. एल-29024/1/2010-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 30th January, 2014

S.O. 610.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. East India Minerals Limited and their workmen, which was received by the Central Government on 27-1-2014.

[No. L-29024/1/2010-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 14/2010

Date of Passing Award - 27th November, 2013

Between:

1. M/s. Vauman Trading Company (P) Ltd.,
4 A, Indra Kumar Karnani Sarani,
Room No. 45, 2nd Floor, Kolkatta - 700 001.

2. M/s. East India Minerals Ltd.,
At. Barbil Trade Centre, 3rd Floor,
Main Road, Po. Barbil.

... 1 st Party-Managements

(And)

Their workmen represented through
Barbil Workers Union, At/Po. Bolani,
Dist. Keonjhar (Orissa).

... 2nd Party-Union

Appearances:

Shri P. K. Mahapatra, Advocate. ..... For the 1st Party-Management No.l and 2.

None. ..... For the 2nd Party-Union.

AWARD

The Government of India in the Ministry of Labour has sent a reference under clause (d) of sub-section (l) and sub-section (2A) of Section 10 of the Industrial Disputes Act for adjudication of an industrial dispute existing between the employers in relation to the management of M/s. Vauman Trading Company (P) Limited/ M/s. East India Minerals Limited and their workmen vide letter No. L- 29024/1/2010 - IR(M), dated 4.8.2010 .

2. The industrial dispute reads as follows:-

"Whether the action of the management of M/s. Vauman Trading Company (P) Ltd./M/s. East India Minerals Limited in affecting retrenchment of 128 workmen w.e.f. 18.11.2009 is justified? What relief the workmen concerned are entitled to from M/s. Vauman Trading Company (P) Ltd. and M/s. East India Minerals Limited."

3. The 2nd party-Union espousing the cause of the workmen has filed statement of claim wherein it has been stated that the 1st Party- Management No. 1 is a sub-contractor appointed by the 1st Party- Management No. 2 in the establishment of Orissa Minerals Development Corporation Limited. The 1 st Party-Management No. 1 appointed 128 piece rated workers along with supervising staff on 15.l0.2008 for a period of two years i.e. up to 3.10.2010. The 1st Party- Management No. 1 was not paying wages similar to the wages being paid by the principal employer i.e. the Orissa Minerals Development Corporation Limited to their workmen and contract workers engaged in the same establishment for doing similar nature of work. The concerned workmen disappointed with their representative Union, namely, Champua Labour Union resigned from the said Union and enrolled themselves with the Barbil Workers Union. When the disputant workmen raised the demand for similar wages through the 2nd Party- Union the l st Party-Management No. 1 and 2 became furious and threatened them to retrench, if they do not desert the 2nd Party-Union. The workmen refused to do so. Hence the 1st Party-Management No. 1 and 2 retrenched all the 128 workmen without complying with the provisions of law under section 25-N of the Industrial Disputes Act, 1947. The lst Party-Management No. 1 under the support of the lst Party-Management No. 2 illegally closed the mining operation with effect from 18.11.2009 without any notice to the workmen nor paid any retrenchment compensation along with other dues etc. Hence prayer has been made to reinstate the disputant workmen with back wages.

4. The 1st Party-Management No. 1 and 2 have filed identical written statement making allegations that the President of the Barbil Workers Union Mr. Riaz Mahammad Latif is not legally entitled to sue the Management as the said Union is not a registered body. Its registration was cancelled on 31.5.2003. The 1st Party-Management No. 1 is the Contractor-cum-Executing Agency of the 1 st Party-Management No. 2, who is the principal employer in the establishment of OMDC in their Iron Ore Mines at Roida (South Top Section) at Bhadrasahi. It engaged 128 piece rated workers on 15.10.2008 for a period of two years. During continuance of the said mining work some financial problem arose and the 1st Party-Management No. 1 being unwilling to continue the contract of the 1st Party-Management No. 2 started process of retrenchment by serving three months prior notice to the workmen to stop work and advised them to take their dues by 18.11.2009. An application was also made by the lst Party-Management No. 1 to the Secretary to the Government of India, Ministry of Labour, New Delhi on 19.8.2009 thereby seeking permission of retrenchment under clause (b) of

sub-section (1) of Section 25 N of the Industrial Disputes Act, 1947 with a copy to Regional Labour Commissioner (Central), Bhubaneswar; Assistant Labour Commissioner (Central), Rourkela; the L.E.O., Barbil; Senior General Manager, East India Minerals Limited; General Secretary, Champua Labour Union Joda and Employment Officer, Joda Employment Exchange. On expiry of notice period the Secretary of the Champua Labour Union checked the statutory dues sheet and on being satisfied with the provision made by the contractor i.e. the 1st Party-Management No. 1 agreed to take the dues of the workmen along with retrenchment benefits which were deposited to the respective Saving Bank accounts of the workmen. Some of the workmen directly received the payments made in their favour. In the letter to the Regional Labour Commissioner (Central) the Ist Party- Management No. 1 also categorically stated that they do not want to make any settlement with the Barbil Workers Union since it is not a recognized Union. Thus the 1st Party-Management No. 1 after complying with all the necessary formalities and the statutory provisions has not done any wrong or injustice to the workmen in retrenching them. Therefore all the allegations raised by the 2nd party- Union are baseless and fictitious. The Labour Enforcement Officer in his letter dated 19.1.2010 has reported that there is no case/complaint pending against the 1st Party-Management No. 1. Hence there is no cause of action to initiate this case against the l st Party-Management No.l. The I. D. Case deserves to be dismissed in toto.

5. After filing of the written statement by the 1st Party-Management No. 1 and 2 there was no response from the 2nd Party-Union. It appears from the order sheet that the statement of claim was sent through post by the President of the 2nd Party-Union and neither he nor his authorized representative ever appeared in the case. Notice issued to the 2nd Party-Union were received back with a note of "left". Hence the case was set exparte against the 2nd Party-Union.

6. On behalf of the l st Party-Management No. 1 and 2 sworn affidavit of Shri Jiban Mohan Pany was filed along with certain documents in the shape of xerox copies. The deponent in his affidavit while proving the documents, has stated that all necessary formalities and statutory provisions of Section 25 N of the Industrial Disputes Act were followed in affecting retrenchment of 128 workmen with effect from 18.11.2009 and necessary dues along with retrenchment compensation were either paid to the affected workmen or deposited in their Savings Bank Account. The L.E.O. (C), Barbil vide his letter dated 19.1.2010 has reported that there is no case/complaint pending in his office against the Ist Party-Management No. 1 pertaining to the period from 15.10.2008 to 18.11.2009. The uncontroverted evidence of the 1st Party-Management No. 1 and 2 cannot be disbelieved vis-a-vis no evidence of the 2nd Party-Union. Hence it is to be held that the Management of M/s. Vauman Trading Company (P) Limited/M/s. East India Minerals Limited, while affecting the retrenchment of 128 workmen with effect from 18.11.2009 has committed no illegality and their action is justified. The concerned workmen are not entitled to any relief from the 1st Party-Management No. 1 and 2.

7. The reference is answered accordingly.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 31 जनवरी, 2014

का.आ. 611.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, नेशनल सेफ्टी कौंसिल, नवी मुम्बई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय -2, मुम्बई के पंचाट (संदर्भ संख्या CGIT-2/55 of 2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-42012/54/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st January , 2014

S.O. 611.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT-2/55 of 2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Director, National Safety Council, Navi Mumbai and their workmen, which was received by the Central Government on 24-1-2014.

[No. L-42012/54/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K.B. KATAKE, Pesiding Officer

REFERENCE NO. CGIT-2/55 of 2010

EMPLOYERS IN RELATION TO THE MANAGEMENT OF NATIONAL SAFETY COUNCIL

The Director,
National Safety Council,
Plot No.98-A, Institution Area,
Sector-15, CBD Belapur,
PO Konkan Bhavan ,
Navi Mumbai 400 614.

AND

Their Workmen

Shri Darshan Pandurang Sakpal,
At Post Pangari,
Taluka Dapoli ,
Ratnagiri 415 711.

APPEARANCES :

For the Employer : Mr. Umesh Nabar, Advocate.

For the Workmen : Mr. M.I. Ali, Advocate.

Mumbai, dated the 10th September 2013 .

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No.L- 42012/54/2010-IR (DU), dated 31.05.2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of M/s. National Safety Council in terminating the services of Shri Darshan Pandurang Sakpal w.e.f. 22-08-2005 is legal and justified? If not, what relief the workman is entitled to?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party workman filed his statement of claim at Ex-5. According to him he was in the service of the first party as Safaiwala-cum-Farash. He worked with the first party since 1994. His services were terminated by the first party without any fault on his part. The action of termination of his service is illegal, malafied and bad in law. The inquiry conducted against the workman is not fair and proper and it was only empty formality. The second party workman was working with the first party sincerely and his service record is unblemished. The first party has charge-sheeted him for false and frivolous charges. The inquiry was not conducted properly. He was not given sufficient opportunity. There was violation of principles of natural justice on the part of the Inquiry Officer. The findings of the IO are perverse. In the year 2005 the workman had filed appeal against the said order of IO. The same was kept in abeyance till 2009 when they informed the second party that it was rejected. The second party then raised industrial dispute. As per the report of the ALC (C), the Labour Ministry sent the reference to this Tribunal. According to the workman the inquiry was not fair and proper and findings of the IO are perverse. Therefore he prays that the punishment of termination of his services be set aside and he be reinstated with full back wages and also prays for the cost of the reference.

3. The first party resisted the statement of claim vide' their written statement at Ex-5. According to them it is a registered society under Societies Registration Act, 1960 with the objective of building voluntary movement at the national level on safety, health and environment for preventing loss of life, limb, and economic losses and providing support services to its members. It is an independent and non-commercial, non-profit making, non-political and autonomous society and it is not an industry as defined under I. D. Act. This dispute cannot be called industrial dispute as contemplated under I.D.Act. Therefore, the reference is not maintainable.

4. According to them the workman was charge-sheeted vide charge sheet dated 12-08-2004 for the misconduct and inquiry was conducted by the Inquiry Officer. The IO had explained the charges to the workman. He was given full and fair opportunity to defend himself in accordance with the principles of natural justice. The IO found the workman guilty of the charges levelled against him. Copy of inquiry report and findings of IO were given to the second party with show cause notice. After going through the inquiry proceedings, findings of IO and the representation of the workman, the disciplinary authority dismissed the second party as he was found guilty for serious misconduct. His contention is false that he was not given fair and proper opportunity to defend himself. The IO had asked the workman that he can engage defence representative to defend himself. However workman refused to engage any defence representative and told that he was competent to defend himself. All the witnesses were examined in presence of the workman. He cross examined them. The workman was also given an opportunity to lead his evidence. Accordingly he examined himself and after considering the evidence of both the parties, the IO arrived at the conclusion that the workman was guilty of misconduct. The IO has followed the due procedure prescribed for the inquiry. There was no violation of Principles of Natural Justice. The inquiry was quite fair and proper and the findings of the IO are just and proper and based on the evidence on record. Therefore the first party prays that the reference be rejected with cost.

5. Following are the preliminary issues for my determination. I record my findings thereon for the reasons to follow:

Sr. no.	Issues	Findings.
1.	Whether the inquiry held against workman Shri Darshan Pandurang Sapkal and findings of IO are legal and proper?	Yes.

REASONS

Issue No. 1 :

6. In this respect the Ld. adv of the first party submitted that there is no specific allegation as to how inquiry was not fair and proper. There is also no specific averment as to how there was violation of Principles of Natural Justice. On the other-hand he pointed out that the workman has admitted in his cross at Ex-10 that he had received all the memos issued by the office from time to time. He also admitted that he had received the charge sheet. He further admitted that the IO had explained the charge sheet to him in Marathi and he has replied the same in Marathi. He also admitted in his cross that he told the IO that he was able to defend himself and did not want to engage a defence representative. He also admitted that he had cross examined the witnesses in the inquiry proceeding and he examined himself in the inquiry proceeding and management cross examined him. He had also admitted in his cross that copies of Inquiry proceedings were handed over to him. In the circumstances the Ld. adv. for the first party submitted that fair and sufficient opportunity was given to the workman to defend himself and there was no violation of Principles of Natural Justice. On the point Apex Court ruling can be resorted to in Sur Enamel and Stamping Works Ltd. Vis. Their Workmen 1963 11 LLJ 367 wherein the Hon'ble Apex Court laid down the following conditionsfor fair and proper domestic inquiry. They are:

(1) The employee proceeded against has been informed clearly of the charges leveled against him.

(2) The witnesses are examined-ordinarily in the presence of the employee in respect of the charges.

(3) The employee is given a fair opportunity to cross examine witnesses.

(4) He is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter; and

(5) The inquiry officer records his findings with reasons for the same in his report.

7. In the light of guidelines of the Apex Court in the inquiry herein all the points given above were complied with. The IO has explained the charge to the workman in Marathi. The inquiry was conducted in presence of the workman. Copies of all the documents were given to him. He was given opportunity to cross examine the witnesses. He was also given an opportunity to examine himself and lead his evidence. He was given full opportunity to defend himself. It is vaguely contended that, the inquiry officer has violated the principles of natural justice. However no specific instance was given or pleaded as to how the IO has violated the principles of natural justice. On the other hand from the above referred facts it is clear that the IO has given full and sufficient opportunity to the workman.to defend himself. There was no violation of principles of natural justice. In the circumstances I come to the conclusion that the inquiry was fair and proper.

8. In respect of findings of Inquiry Officer according to the second party they are perverse. In this respect the Ld. adv for the first party submitted that the findings are based on the evidence before the Inquiry Officer. Therefore such findings cannot be called perverse. Ld. adv further submitted that the jurisdiction and power of Industrial Tribunal is limited to interfere with the findings of"domestic inquiry when they are consistent with the evidence on record. In support of his argument the Ld. adv. resorted to Apex Court ruling in M/s. Banaras Electric Light and Power Co. Ltd. V/s. The Labour Court II and Ors. 1972 II LLJ 328 wherein on the material point the Hon'ble Court observed that;

> "…. this court had in several cases while dealing with industrial disputes of this kind occasion to point out that an industrial Tribunal would not be justified in characterizing the findings recorded at the domestic inquiry as perverse unless it can be shown that such a finding is not supported by any evidence or is entirely opposed to the whole body of evidence adduced before it. In a domestic inquiry once conclusion is deduced from the evidence, it is not possible for some other authority to assail that conclusion even though it is possible for some authority to arrive at a different conclusion on the same evidence."

9. The findings herein recorded by the IO are based on the evidence on record and there is no reason to take any different view than the findings recorded by the IO. In the circumstances, I hold that the findings of the IO are found to be fair and proper. Accordingly I decide this preliminary issue in the affirmative and proceed to pass the following order.

ORDER

(i) The inquiry is held fair and proper.

(ii) Findings of the Inquiry Officer are not perverse.

(iii) The parties are directed to arque/lead evidence on the point of quantum of punishment.

Dated : 10.09.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 31 जनवरी, 2014

का.आ. 612.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मेनेजर, मज़गाओं डॉक लिमिटेड, मुम्बई के प्रबंधतंत्र के संबद्ध नियोजकों

और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय -2, मुम्बई के पंचाट (संदर्भ संख्या CGIT-2/10 of 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-14012/25/2003-आईआर (डीयू)

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st January , 2014

S.O. 612.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT-2/10 of 2004) of the Central Government Industrial Tribunal-cum-Labour Court No.II, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The General Manager, Mazgaon Dock Ltd, Mumbai and their workmen, which was received by the Central Government on 24-1-2014.

[No. L-14012/25/2003-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT :

K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT -2/10 of 2004

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MAZGAON DOCK LTD.

The General Manager
M/s. Mazgaon Dock Ltd.
Dockyard Road
Mazgaon
Mumbai-400 010.

AND

Their Workmen

Shri Vipin Yashwant Chavan
C/o. Mrs. M.V.Chavan
205, Tapasya Co-op. Housing Society Ltd.
2nd floor, Yashodhan
Lokmanya Nagar No.2
Thane (W).

APPEARANCES:

FOR THE EMPLOYER	:	Mr. R. S. Pai, Advocate.
FOR THE WORKMEN	:	Mr. Umesh Nabar, Advocate.

Mumbai, dated the 21st December, 2012

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-14012/25/2003-IR (DU), dated 29.01.2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of M/s. Mazgaon Dock Ltd. in terminating the services of Shri. Vipin Yashwant Chavan w.e.f. 13-10-1990 is legal and justified? If not, to what relief is the workman entitled to?"

2. After receipt of the reference both the parties were served with notices. In response to the notice the second party workman filed his statement of claim at Ex-5. According to the workman he was serving with the first party since August 1983 as tool room attendant. The workman could not report his duty from 5-10-1989 to 15-12-1990 as he was taken ill. Meanwhile the first party has terminated the service of the second party w.e.f. 13-09-1990 after holding a farce of inquiry which was conducted exparte. Neither second party was served with charge-sheet nor any notice of inquiry was served on him and without hearing him the inquiry was concluded and he was terminated from service. The first party made application under Section 33 (2) (b) of I.D. Act, 1947 for approval of the dismissal order. The Industrial Tribunal rejected the approval application on 17/04/1997. The first party challenged the said order in WP no.1838/1997 before Hon'ble High Court. The Hon'ble High Court remanded the matter to Industrial Tribunal with a direction to give opportunity to both the parties to lead their evidence. On application of the first party the State Industrial Tribunal has disposed of the said application no. 44 of 1990 saying that it has no jurisdiction to try the matter as Central Government was the appropriate Government. The first party was supposed to file application before Central Government Industrial Tribunal which was the proper authority to grant approval to the dismissal order passed by the first party. However first party failed to take an approval. Therefore dismissal order is illegal.

3. According to the second party, he had approached to ALC (C) for conciliation and demanded reinstatement in service with full back wages. The conciliation failed and on the report of ALC (C), the Labour Ministry has sent the reference to this Tribunal. According to the second party, he had sent his leave application dt. 4/6/1990 by UCP i.e. some two months prior to the order of dismissal. He has also sent medical certificate showing that he was suffering from acute PID with sciatica pain from 5/10/1989 to 15/12/1990. Inspite of that the first party neither qranted him leave nor given him intimation of

inquiry and conducted exparte inquiry arid dismissed him from service. According to him the inquiry was illegal. There was gross violation of principles of natural justice. Therefore he prays that the order of dismissal be set aside and first party be directed to reinstate him with full back wages and continuity of service.

4. The first party resisted the statement of claim vide its written statement at Ex-8. According to them the services of the workman was terminated w.e.f. 14/09/1990. The present reference thus suffers from inordinate delay and laches and not maintainable. According to them the workman remained absent from duty from 11/10/1989 onwards without any permission or intimation to the company. On 8/11/1989 company wrote advisory letter to the workman at his address at Thane and he was asked to resume duty within four days from the date of receipt of letter and explain with documents the reasons for his unauthorised absence. The workman neither resumed his duty nor responded to the said letter. On the other hand he continued to remain absent without permission. The company therefore chargesheeted him vide charge-sheet 24/1/1990 for misconduct of absence without permission/ instruction for a period exceeding 10 consecutive days and for commission of an act subversive of discipline of the establishment under the standing orders 22(6) and 22(12) respectively. Chargesheet was sent to the workman at his address at Thane as well as at his native place address by RP AD. However envelopes containing copies of chargesheets returned with remark "not claimed". The inquiry was adjourned upto 16/04/1990 with further intimation to the workman. As he failed to attend the inquiry, the inquiry was conducted ex-parte. The I.O. submitted his report on 4/6/1990 holding the workman guilty of the charges levelled against him. The company dismissed the workman from his services vide its order dated 14/8/1990. The said order is legal and proper.

5. In the year 1990 as reference IT No. 24 of 1980 was pending before the State Industrial Tribunal, the company made an Approval Application U/s 33 (2)(b) of I.D. Act. Against the order passed by the Tribunal, Company filed Writ Petition No.1838/1997. Hon'ble High Court set aside the order and remanded the matter back to the Tribunal with a direction to dispose of the Approval Application within six months. In the meantime Apex Court in the case of Air India Statutory Authority reported in 1997 I CLR 292 rejected the Approval Application inter alia on the ground that appropriate Government in respect of the company is Central Government. Furthermore the said Tribunal also dismissed the main reference No. 24/1980 on the ground that the appropriate Government is Central Government. In the circumstances said Approval Application also came to be dismissed by State Tribunal on the ground that appropriate Government was Central Government. At that point of time no industrial dispute was pending, therefore the company was not required to file Approval Application. Though the approval application was dismissed by the State Tribunal for want of jurisdiction, the workman did not raise any industrial dispute for a considerable period of time and there is in ordinate delay in filing the reference. They denied that the workman is unemployed. They denied that workman had sent leave application dated 4/6/1990 prior to his dismissal as has been alleged. They also denied that workman remained absent on account of sickness or ill health.

6. According to them intimation was issued to the workman on 8/11/1989 advising him to report for work. As he failed to join the duties, company issued charge sheet dt.24/01/1990. The envelope returned with postal endorsement 'not known and unclaimed'. Inspite of full knowledge workman did not attend the Inquiry and inquiry was concluded ex-parte. The workman was therefore, dismissed from service by the order dt.13/08/1990. He was also sent one month's wages in lieu of notice as required under law. The workman deliberately remained absent and did not attend the inquiry. Therefore inquiry cannot be said to be not fair and proper. The findings of the inquiry officer also cannot be called perverse. The order of dismissal of worker is quite legal and proper. The workman is not entitled to the relief of reinstatement with back-wages as has been claimed. The first party therefore prays that reference be dismissed with cost.

7. The second party filed his rejoinder at Ex-9. He denied the allegations in the written statement and reiterated his case in the statement of claim.

8. Initially the reference was filed before the State Industrial Tribunal. While passing the part-I award the State Industrial Tribunal held that, the inquiry was not fair and proper and findings of the Inquiry Officer are perverse. The said findings of the State Industrial Tribunal were approved by Hon'ble High Court in Writ Petition. Therefore when this reference came before this Tribunal, my Ld. Predecessor had taken into account all these facts and held that there is no propriety of framing the issue of fairness of inquiry and perversity of the findings as those preliminary issues were already decided by the State Industrial Tribunal. Therefore my Ld. Predecessor by his order below Ex-18 framed the following issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether first party proves the charges levelled against second party?	Yes

2.	Whether second party proves termination is illegal?	Yes
3.	What relief second party is entitled to?	As per order below.
4.	What order?	As per order below.

REASONS

Issue no.1 :-

9. The charge against the second party workman was that he was unauthorisedly absent from duty from 11.10.1989 till the date of issuing charge-sheet dated 24/01/1990 and even thereafter. According to the first party by memo dated 8/11/1989 they informed the second party to resume his duty within four days and to explain the reason of his absence without intimation. As no reply was given by the second party, first party has issued charge sheet dated 24/01/1990.

10. The State Industrial Tribunal has declared the enquiry as unfair and improper and findings of the Inquiry Officer were also declared as perverse. In this respect, Ld. Adv. for the first party submitted that, the fact is not disputed that the workman was absent from 11/10/1989. According to him though a memo of advice was issued to the workman dt. 8/11/1989 neither he reported to his duty within time nor has explained the reasons of his absence and continued to remain absent. Therefore, charge-sheet dated 24/1/1990 was issued to the workman. In this respect according to the workman he has sent application dated 4/6/1990 leave application to the concerned officer about his illness and stating that he is under treatment of Dr. B. S. Patil. The copy of the said application is on record with list Ex-7/1. After perusing the application it is revealed that, this application is not an application for leave. It is only intimation of ill health of the second party and that he was under treatment of Dr. B. S. Patil, Medical Officer, Thane since 5/10/1989. This application was neither for leave nor was accompanied with medical certificate. The second party has also admitted in his cross at Ex-22 that medical certificate was not sent by him along-with the application dated 4/6/1990. The medical certificate is also on record with list Ex-7/2. It was obtained on 15/12/1990. Therefore it cannot be said that, any medical certificate was sent by the second party alongwith his application. Furthermore he has never sent any application for leave. In short, the second party workman was unauthorisedly absent. Neither he had applied for leave nor given prior intimation to the company in respect of his leave. In the circumstances conclusion can be arrived at that the charge of unauthorised absence for more than 10 days is proved by the first party against the workman. Accordingly I decide this Issue no. 1 in the affirmative.

Issues nos. 2 & 3:-

11. In respect of this issue I would like to point out that though the issue is framed in respect of legality of termination, in the light of industrial dispute, it has to be construed in its proper perspective. In short, the issue has to be read as; "Whether the punishment of dismissal is shockingly disproportionate? The same issue was before the Tribunal and the evidence and case laws are also cited thereon. Therefore without re-casting this issue I think it proper to proceed to discuss the point in issue.

12. In this respect Ld. Advocate for the first party submitted that as sick leave application was not accompanied with medical certificate, therefore removal from service of the employee is just and proper. In support of his argument the Ld. Adv. resorted to Apex Court ruling in New India Assurance Co. V/s. Bipin Biharilal Srivastava 2008 II LLJ 317 (SC) wherein the Hon'ble Court held that, sick leave application submitted by the respondents were not supported by medical certificates from a registered medical practitioner as required by the rules. In the circumstances, the Hon'ble Court held that the punishment of removal from service cannot be challenged.

13. However in that case the workman therein was absent for more than 600 days. Whereas in the case at hand the workman was absent from 11/10/1989 and charge was framed against him on 24/01/1990. In short in the case at hand workman was absent for one hundred and six days when he was chargesheeted. The ratio laid down in this ruling is mainly in respect of sick leave application should be supported by medical certificate of a registered medical practitioner. The facts in this ruling are totally different. Therefore ratio laid down therein is not attracted tothe set of facts of the case in hand.

14. In this respect Ld. Adv. for the first party further submitted that Labour Court or Industrial Tribunal or even High Court cannot interfere unless punishment imposed is found to be wholly shockingly disproportionate to the decree of guilt of the workman. In support of his argument, the Ld. Adv. resorted to Apex Court ruling in L & T Komatsu Ltd. V/s. N. Udaykumar 2008 I LLJ 849 (SC) wherein the Hon'ble Court observed that ;

> ".....Habitual absenteeism is a gross violation of discipline and the parameters for the exercise of Section 11-A have not be kept in view by the Labour Court and High Court. Unless the punishment was shockingly disproportionate, quantum of punishment could not be interfered with."

However this ruling is in respect of habitual absenteeism, therefore ratio laid down therein is also not applicable to the set of facts of the present case.

15. The Ld. Adv. for the first party on the point resorted to another Apex Court ruling in North Eastern

Karnataka Road Transport Corporation V/s. Ashappa & Anr. 2006 II LLJ 865 (SC) wherein Hon'ble Court in para 8 of the judgement observed that;

> ''Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The Appellant runs a fleet of buses. It is a Statutory Organisation. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time.''

In this case a bus conductor was found absent for three years. Furthermore after perusing his previous leave record, the Hon'ble Court further observed that;

> ''..... his leave records were seen and it was found that he remained unauthorisely absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the respondent herein has to be treated lightly. "

16. In this case also the unauthorised absence was of three years as well as previous leave record of the conductor was indicating that he was unauthorisedly absent on several occasions. Therefore Hon'ble Court held that punishment of termination in that case was not shockingly disproportionate. In the case at hand neither period of unauthorised absence is so vast nor there is previous record of unauthorised absence. Therefore the ratio laid down in the above ruling is also not attracted to the set of facts of the present case.

17. The workman herein remained absent from 11.10.1989 and he was chargesheeted on 24.01.1990. Thereafter also the workman was absent. However punishment is in respect of the charge mentioned in the chargesheet which is for the period of three and half months unauthorised absence. From the medical certificate with list Ex-7/2 it is revealed that the workman was absent till 15.12.1990 and he has produced medical certificate from the medical officer. Even considering the said period, his period of absence is not more than 14 months. Furthermore I would also like to point out that the workman was not engaged to do any work of responsibility like any public transport. On the other hand he was a Tool Room Attendant. Furthermore according to the workman he had sent apptication/letter of intimation to the first party that he was seriously ill since 05.11.1989 and was under the treatment of Medical Officer. He sent the said letter at a late stage on 04/06/1990. The O/C of the said letter with postal receipt Under Certificate of Posting is with list Ex-7/1. It is a fact that he had not sent leave application. In this respect the Ld. Adv. for the second party rightly pointed out that the workman is a rustic villager and not much educated and was seriously ill. He was staying far away from his family and there was no body to look after him during his illness. Therefore he could not send leave application. There was also nobody to guide or advise him. In these circumstances the punishment appears very harsh and disproportionate for the misconduct of three & half months unauthorised absence. In my opinion in this case, withholding an increment would have sufficed the purpose. Accordingly hold that punishment of dismissal is shockingly disproportionate and needs to be set aside and the workman deserves to be reinstated.

18. In respect of back wages the Ld. Adv. for the first party submitted that the second party has failed to prove that since the date of dismissal he was not gainfully employed. According to him the onus to plead and prove the fact was on the workman and not on the employer. In support of his argument, the Ld. Adv. for first party resorted to Apex Court ruling in UP State Brassware Corporation Ltd. & Anr. V.s. Uday Narayan Pandey (2006) 1 SCC 479 wherein on the point Hon'ble Court in para 61 of the judgement observed that;

> "It is now well settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of Section 106 of the Evidence Act or the provisions analogues thereto such a plea should be raised by the workman."

19. In this respect the Ld. Adv. for the first party further pointed out that back wages should not be granted automatically or mechanically as termination is found to be unjust. In support of his argument that Ld. Adv. resorted to the above Apex Court ruling. In para 22 of the judgment the Hon'ble Court in respect of back-wages observed that;

> "No precise formula can be laid down as to under what circumstance payment of back-wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would however be not correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of Section 6 N of the UP Industrial Act."

In the same judgement in para 45 the Hon'ble Court on the point further observed that;

> "The Court therefore emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back-wages therefore cannot be the natural consequence. "

20. In respect of the back wages the Ld. Adv. submitted that if the punishment of dismissal is reduced to some other punishment, the workman is not entitled to any back-wages. In support of his argument the Ld. Adv. resorted to Apex Court ruling in J. K. Synthetics Ltd. V/s.

K.P. Aggrawal & Anr. (2007) 2 SCC 433 wherein on the point of back wages the Hon'ble Court observed that;

> "At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done with the discretion of the authority that something is to be done according to the rules of reasons and justice, according to law and not humour. "

21. In the case at hand the fact is not disputed that it was the workman who was at fault. At the same time I would like to point out that the workman was dismissed from service for unauthorised absence for the period of 3 1/2 months. The said punishment was found shockingly disproportionate. The workman was taken ill and could not submit leave application. Due to his illness and ignorance he could not contact the authority. At the same time I would like to point out that the workman has not at all worked since 10/11/1989. 'No work no wages' is also accepted principle. The workman has also not led any evidence that he was not gainfully employed. On the otherhand he has stated in his cross at Ex-22 that he was engaged by his elder brother to help him in the house work. He further says in his cross that he was attending work of bringing material from market to meet the needs of the family members for which his brother was maintaining him. It shows that he was doing some work with his brother at his native place. In the circumstances awarding full wages would burden the first party unnecessarily. At the same time it is also pertinent to note that the workman has lost his wages since 1989 and not awarding any back wages would amount to injustice to him. In this backdrop to meet the ends of justice and after taking into account the facts and circumstances of the case at hand I think it proper to award 10% back wages and continuity of service. Accordingly I decide the issue no. 2 in the affirmative and issue no. 3 accordingly and proceed to pass the following order :

ORDER

(1) The reference is partly allowed.

(2) The inquiry is held fair and proper. Findings of the inquiry Officer are held not perverse.

(3) The punishment of dismissal is declared shockingly disproportionate to the proved misconduct.

(4) The punishment of dismissal is set aside. Instead of dismissal, punishment of withholding one increment be imposed on the workman.

(5) The workman be reinstated in service forthwith, with 10% back wages from the date of dismissal till the date of his reinstatement with continuity of service.

Date: 21.12.2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 31 जनवरी, 2014

का.आ. 613.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेनेजर, नेशनल डेरी डेवलपमेंट बोर्ड, मुम्बई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय -2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/5 of 2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-1-2014 को प्राप्त हुआ था ।

[सं. एल-42012/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

Delhi, the 31st January , 2014

S.O. 613.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT-2/5 of 2012) of the Central Government Industrial Tribunal-cum-Labour Court No.II, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Manager, National Dairy Development Board, Mumbai and their workmen, which was received by the Central Government on 24-1-2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT :

K. B. KATAKE, Presiding Officer

MISCELLENEOUS APPLN. NO. CGIT -2/5 of 2012 IN

Ref. CGIT-2/21 of 2008

PARTIES:-

Shri Devraj Govind Swamy & Ors.
180-C, 1 st floor
J.J. Keni Lane
Dharavi Koliwada
Dharavi Road
Mumbai - 400 019. : Applicant

V/s.

The Manager
National Dairy Development Board
Western Express Highway
Goregaon (E)
Mumbai- 400 065. : Opposite Party

APPEARANCES:

FOR THE APPLICANT : Mr. O. Mohan Das,
i/b M/s. Little & Co.
Advocates.

FOR THE OPPOSITE PARTY : Ms. Pallavi Kulkarni,
Representative.

Mumbai, dated the 22nd April, 2013

JUDGEMENT

The applicant i.e. second party union in Ref. CGIT-2/21 of 2008 has filed this application for restoration of the reference. According to theapplicant they had already submitted the statement of claim but was not exhibited by the Court Clerk. The first party did not file its written statement and was delaying the matter. Applicants state that they are the poorest of the poor workers who have been pursuing this issue against the opposite party company since years. It is a matter of their livelihood. Therefore they pay that in the interest of justice order dated 23.4.2012 be recalled and the reference may be restored to proceed on merits. They also assured that they would diligently follow this matter and remain present in the proceeding.

2. The opposite party (first party in reference) resisted the application by filing affidavit in reply of Shri Dharmesh N. Thakkar, Dy. Manager (Legal Group) of the opposite party. According to him the application is not maintainable as the reference in question was filed by the union and not by applicant, Mr. Devraj. According to him the application is barred by limitation and therefore deserves to be dismissed. The Opponent therefore prays that the application be dismissed with costs.

4. Following are the points for my determination. I record my findings thereon for the reasons to follow:

Points	Findings
1. Whether the reference can be restored to its original file?	Yes.
2. What order ?	As per order below.

REASONS

Point no.1 :-

5. The applicants submitted that they had filed the statement of claim on 06.01.2009 but was not exhibited. In this respect on perusal of the record it was found that as per the order of reference Shramik Mahasangh was representing the concerned workmen whereas the claim statement was filed by union named Krantikari Kamgar Union. Application (Ex-8) for allowing Krantikari Kamgar Union to represent the workmen was rejected as neither the workmen nor their advocate was present. Therefore the statement of claim filed by Krantikari Kamgar Union was not taken on record. Infact there is no clerical error as claimed by the applicants.

6. In respect of restoration of Ref.CGIT-2/21 of 2008 to its original file, applicants workmen state that their advocate could not remain present on some dates due to ill health and was under the impression that the matter was fixed for filing written statement by the management as they have already filed the statement of claim. It is well settled principle of law that as far as possible every matter should be decided on merits. In the light of the said principle and in the interest of justice, I think it proper to set aside the exparte award dated 23.04.2012 and restore Ref.CGIT-2/21 of 2008 to its original file. Thus I proceed to pass the following order ;

ORDER

(i) Application is allowed.

(ii) The earlier award dt. 23.04.2012 in Ref.CGIT-2/21 of 2008 is hereby set aside. Ref.CGIT-2/21 of 2008 is restored to its original file.

Date: 22.04.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का.आ. 614.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट मास्टर जनरल, डिपार्टमेंट ऑफ पोस्ट्स, राजकोट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए-111/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/07/2008-आईआर (डीयू)

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 3 rd February , 2014

S.O. 614.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (I.D. No. CGITA-111/2010) of the Central Government Industrial Tribunal/ Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Post Master General Department of Posts, Rajkot and their workman, which was received by the Central Government on 28-1-2014.

[No. L-40012/07/2008-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,
Presiding Officer, CGIT -cum- Labour Court,
Ahmedabad, Dated 23rd December, 2013

Reference (CGITA) No. 111/2010

Reference (ITC) No. 1679/2008 (old)

The Post Master General,
Department of Posts,
Head Post office,
Rajkot-360001 .... (Employer) lst party

And

Their Workman
Late Dinesh Jerambhai Baraiya
Smt. Sonaben Dineshbhai Baraiya (widow)
Opp. Bharat Bakery,
Thakkar Bapa Harijanwas,
Garbi Chowk, Rajkot .... (workman) 2nd party

For the First Party : Shri P.M. Rami, Advocate, A.G.P. Labour Courts & Industrial Court

For the Second Party : None

AWARD

The Central Government/Ministry of Labour, New Delhi vide its order No. L-40012/7/2008 IR(DU)) darted 02.06.2008 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 referred the dispute to the C.G.I.T.- cum-Labour Court. Ahmedabad for adjudication on the terms of reference in the Schedule :

SCHEDULE

"Whether the action of the management of the Post Master General, D/o Post, Rajkot, in terminating the services of their workman Shri Dinesh Jerambhai Baria w.e.f. 28.04.2005 is legal and justified? If not, to what relief the legal representative of the workman is entitled to?"

2. In response to notice though Smt. Sonaben the deceased workman's widow appeared on 04.10.2010 and executed power (Vakalatnama) in favour of Shri Harshad L. Baraiya, Advocate, Rajkot. When the case record was pending before the Industrial Tribunal, Rajkot vide Ext.4. But thereafter She (the widow of workman) failed to appear before this tribunal when the case record was received on transfer by the order of MOL on 24.0l.2011, whereas the 1st party Lawyer filed pursises on 29.04.2011 (Ext.5), 19.07.2011 (Ext.6), 04.10.2011(Ext.7)·, 29.04.2013 (Ext.10) and 23.12.2013 (Ext.11) to the effect to close the right of filing statement of claim and to dismiss the reference. In the meantime, fresh notice was also issued by this tribunal to Smt. Sonaben Dineshbhai Baraiya on her address vide Ext.8 but this also went invain and the 2nd party failed to appear as to file statement of claim.

3. So there is reason to believe that the 2nd party has lost interest in this case. So in view of pursis (Ext.11) of the 1st party following order is passed.

ORDER

Since the workman side (2nd party) failed to submit statement of claim, so the terms of reference in the Schedule is answered in favour of the management of the Post Master General, D/o Post, Rajkot in terminating the services of their workman Late Dinesh Jerambhai Baraiya w.e.f. 28.04.2005 is justified.

The reference is accordingly dismissed. No order as to any cost.

Let copy of award be sent to the appropriate Government for publication under section 17 of the I.D. Act.

B. K. SINHA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का.आ. 615.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, बी एस एन एल एंड आथर्स, गुजरात के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय , अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए-920/ 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/238/2002-आईआर (डीयू)

पी. के. वेणुगोपाल, अनुभाग अधिकारी

Delhi, the 3rd February , 2014

S.O. 615.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGITA-920/2004) of the Central Government Industrial Tribunal/ Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation

to the management of The General Manager, BSNL & Others, Gujarat and their workmen, which was received by the Central Government on 28-1-2014.

[No. L-40012/238/2002-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 23th September, 2013

Reference: (CGITA) No. 920/04

Reference (ITC) 5/03 (old)

1. The General Manager, BSNL
Vallabhnagar Telephone Exchange Building,
Pij Road,
Nadiad (Gujarat) 378002

2. The Sub Divisional Officer-Telecom, BSNL,
Anand Telephone Exchange,
Anand (Gujarat) -388002

And

Their Workman

Shri Fatesingh Dulabhai Bariya(Since dead)
(His widow Jantaben Fatesingh Bariya substituted)
C/o Shri J.K. Ved, Sinduri Mate Devasthan,
S.T. Nagar,
Godhara (Gujarat)-389001

For the 1st party:- Shri N.K. Trivedi, Advocate

For the 2nd party:- Shri J.K. Ved, Advocate

AWARD

The Central Government/Ministry of Labour, New Delhi, vide its Order No.-L-40012/238/2002 (IR(DU)) dated 17-4-2003 referred the dispute for adjudication to the Industrial Tribunal Nadiad (Gujarat) under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the I.D. Act,1947 under the terms of reference in the Schedule:

SCHEDULE

''Whether the action of the management of General Manager, BSNL, Nadiad /SDOT, Anand in terminating the services of Shri Fatesingh Dulabhai Baria w.e.f. 1.10.94 without giving retrenchment compensation and notice pay and absorbing juniors overlooking his claim is justified? If not to what relief the workman is entitled for ?''

2. The facts of the case of the 2nd party as per statement of claim (Ext-3) is that the deceased workman Fatehsingh had performed his duty without break continuously from 1990 to 01.10.1994 by doing works of digging pits, erecting telephone pole installation and telephone lines etc. The 1st party had given written notice on 1.10.1994 to Fatesingh and relieved from his duty with assurance that as and when need of works he will be recalled. But Fatehsingh (now dead) was never recalled for work and in the year 1995 Juniors to him were reengaged. Fatesingh had put in service of more than 240 days in calendar years. He was not paid retrenchment compensation and notice pay etc. The 1st party should have prepared seniority list division wise as per Rule-77 of Industrial Dispute Central Rule, 1977 and they have violated Rule -78 and the provision of Section 25(G) of the I.D. Act, 1947. In theconciliation preceding before ALC(c) the 1st party in its reply admitted to have not given notice pay to the workman Fatehsingh and thus 1st party has violated the provision of section 25 F of the I. D. Act. Further case is that the 1st party had assured to call him when vacancy will fall and remained waiting and that caused delay of seven years in raising dispute when also came to know. On these scores prayer to declare null and void the termination order of workman (Fatesingh) now dead and for reinstatement and back wages.

3. As against this the case of the 1st party as per w.s. Ext.6 is that the reference is not maintainable there is no relation of master and servant between 1st part y and the 2nd party. The 2nd party in his s/c has stated incorrect facts as to his employment and working continuously in the B.S.N.L Dept. which are against the actual state of affairs, the allegation made para wise in S/c are denied. The case of the 1st party is that the 2nd party Fatesingh (now dead) was a casual labour and as and when works required he was engaged for the works intermittently. He was not appointed by the B.S.N.L., his name was not sponsored through employment exchange. Fatesingh started casual labour work from the year 1991 and in the year 1993 from January to March and August to December 1993 he left the casual work and went elsewhere for work to get better prospect and during that period he did not do work with the 1st party. Fatehsingh never worked for 240 days in any calendar year. Thereafter the 1st party by a written notice removed from the casual work w.e.f. 01.10.1994. It is denied that in the year 1995 ignoring Fatesingh Jouniors were reengaged by the 1st party and that the 1st party has not violated the provisions of section 2(G) of the I.D. Act. The 1st party, B.S.N.L. is PSU of Government of India having distinct rules and regulation

of appointment of regular staff in B.S.N.L. by publishing advertisement regarding vacancies and calling for name sponsored through employment exchange conducting interview and then selecting deserving candidate etc. But engagement of Fatesingh as casual labour was not processed through rules and regulation of B.S.N.L. More so, due to automation in B.S.N.L.'s prohibition started for engagement since 1993 and thereafter the works to be performed by casual labour were started to be performed through contractor and there remains no requirement of casual works to be performed by the 2nd party Fatesingh. On these scores prayer is made to reject the reference since the 2nd party is not entitled to get any relief.

4. In view of rival contentions of the parties in their pleadings, the following issues are taken up for determination and adjudication upon the terms of reference:

ISSUES

I. Whether the reference is maintainable?

II. Has the 2nd party any valid cause of action?

III. Whether the 2nd party (Fatesingh Dulabhai Bariya) has completed 240 days of works in calendar vear preceding termination w.e.f 01.10.1994 ?

IV. Whether the action of the management of the 1st party is justified in terminating the services of the Fatesingh w.e.f 01.10.1994 without giving retrenchment compensation and notice pay ?

V. Whether the 1st party has absorbed juniors overlooking the claim of Fatesingh?

VI. To what relief the 2nd party is entitled in this case?

FINDINGS

5. ISSUE NO.III :- Both parties have adduced oral and documentary evidence in this case. Ext.-7 is oral deposition of Fatesingh (2nd party) and Ext.16 is oral deposition of 1st party witness Hargovind Patel, AGM in Telecome Nadiad. Ext.9 is termination letter of Fatesingh dated 01.10.1994 issued by the 1st party that his service is no more required from 01.11.1994 due to non-availability of work. You will be engaged as and when required by the department. Ext.l0 are certificates issued by the Telecom Dept. regarding the days casual work done by Fatesingh under S.D.O.T. Anand D. from January 91 to December,91 completing 395 days of work, from January 92 to December 92 under S.D.O. Telegraph, Anand completing 309 days; from March 93 to July 93 for 137 days under S.D.O.T. Borsad and from January 94 to October 94 for 298 days under S.D.O.T., Borsad and Dakor . Ext. 10 go to prove that the 2nd party Fatehsingh had competed more than 240 days of works in the calendar year preceding his termination w.e.f. 1.11.1994 as he worked for whole month October for 31 days. Though Ext.9 the order regarding removal termination is dated 1.10.1994 but the 2nd party actually worked up to 31.10.1994. The evidence of the 1st party witness vide Ext.16 has no leg to stand that Fatesingh has not worked for 240 days in each year. More particularly in the calendar year preceding his terminations vide Ext.9. So the 2nd party has discharged the onus that Fatesingh worked for 240 days in calendar preceding his termination. The onus shifts upon the 1st party but could not disprove that Fatesingh had not worked for 240 days preceding his termination. The 1st party during cross-examination admitted that neither witness notice nor notice pay nor compassion for termination paid to Fatesingh.

6. As per discussion and consideration above, the issue No.(III) is decided in favour of the 2nd party that Fatesingh worked for more than 240 days in calendar year, preceding his termination.

7. ISSUE NO.V:- workman Fatehsingh in his oral evidence (Ext.7) vide para 4 deposed that I came to know that Juniors to me have been recruited and I was also assured to call upon for duties. During cross examination by 1st party lawyer vide para 6 he stated that when I was employed on work in 1991, than other persons were working I was paid wages for the days I performed my duties vide Para-7 though Fatesingh deposed it is not true that those persons made permanent were workers engaged earlier to me and senior to me. From among those made permanent there were workers working with me as they were outsiders. Vide para 8 he admitted that none of workers of his village has been made permanent. But such version of Fatesingh that Juniors were reengaged and given ternporary status could not have been proved by the 2nd party through any documentary evidence. Ext.ll produced on behalf of 2nd .party are recommendation of the committee regarding reengagement without requiring condonation recommendation for reengagement with condonation of 14 and 6 at category No. 1, 2, 3 and 4 and at category No. 5 not recommended due to continuous break more than 365 days -73 persons and at category- 6 26 pending case. In none of the list of 6 categories the name of Fatesingh find place. Ext.11 do not go to support the oral version of Fatesingh that his Juniors were reengaged and he was left. These recommendation are concerning retrenched casual labourers of Kheda Telecome District where as the 2nd party Fatesingh had worked under Anand Telecome District at Anand, Borsad and Dakor. So, Ext.11 are not relevant to support the case of 2nd party. Exr.12 is reply of B.S.N.L. though sub Divisional Engineer (legal) O/o G.M.T.D. Nadiad before ALC (Central) where in it has been categorically accepted that compensation and notice pay as per I. D. Act. At does not appear to have been paid to Fatesingh erroneously by this department. The 1st party has submitted with list

(Ext.20) 5 documents -(1) letter No. 269-4/93 STN 11 casual labourer (Grant of Temporary status dated 17.12.1993 (2) letter No. E-298/V/179 dated 22.02.1995 (3) Recommendation of the committee Annexure A to F which are similar to that of Ex.11 submitted by the 2nd party. (4) Regularisation of casual labour letter dated 30.08.1989 and (5) list of casual labour regarding payment of compensation by M.O. dated 19.12.1995. 1st document do not cover the eligibility of Fatesingh as he was working as C/L from Jan 1991 and not from 31.03.1985 to 22.06.1988. So this was reason that recommendation of committee was regarding reengagement of workers senior to Fatesingh. From the 5th document which are list of bulk money order issued to retrenched C/L there is no mention of name of Fatesingh. The 1st party has emphatically denied that any Junior to Fatesingh was reengaged and made regular.

8. As per discussion and consideration above, the issue no-V is decided against the 2nd party and it is held that the 1st party has not absorbed juniors overlooking the claim of Fatesingh.

9. ISSUE NO IV:- As per findings to issue no III and V in the foregoing paras I am of the clear opinion that the 1st party has clearly violated the provisions of section 25F of the I.D. Act, 1947 in not giving notice or notice pay and retrenchment compensation to Fatesingh on his termination though Fatesingh had completed 240days in each calendar year of his engagement as casual labour and had also completed 240 days in calendar year preceding termination.

10. Now Fatesingh (Origianl 2nd party) is dead and his widow substituted in his place. So there is no question of reinstatement of Fatesingh Dulabhai Bariva. So, now the question is to be-examined whether widow Jantaben Fatesingh Bariya is entitled for back wages till the date of death of her husband Fatesingh on 29.10.2007 as per death certificate.

11. On behalf of the 2nd party case law of Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana) (2010) 2 S.C.C. (C&S) 63, Harjinder Singh Vs. Punjab State Warehousing Corp. [2010(1) S.C.C. (L&S)] 1146 and director Fisheries Terminal Dept. Vs. Bhikhubhai Meghajibhai Chavda (2010) 1 S.C.C. (L&S) 1 in support of effect of violation of the provision of section 25F of the I.D. Act. One more case law has been filed Bharat Sanchar Nigam Ltd. Vs. Mansigh (2012 LLR1 S.C.) on the matter of awarding compensation instead of reinstatement.

12. On the other hand the 1st party has relied upon the case of Hamanshu Kumar Vidyarthi & other Vs. State of Bihar [F.L.R. 1997(76)237 S.C]. On the point that service of daily wages, a temporary employee is terminated, he had no right to post, his dis engagement held not arbitrary. His case cannot be treated under Industrial Disputes Act. On this point another case law reported in A.I.R 1996 SC 1565 (State of Himachal Pradesh Vs. Suresh Kr. Verma and another) has been relied termination of daily wage employees due to coming to end of project, direction to reengage them in any other work or appoint them against existing vacancies cannot be given. The 1st party has also cited case laws state of Maharstra Vs. Dattatraya Digamber Birajdar (2007 LLR 1132 S.C.) on point of raising dispute after eight years of dismissal being stale would not be maintainable. Kendriaya Vidhyalaya Sangathan and Ans Vs. S. C. Sharma 2005 LLR S.C. 275 on point of gainful employment. The case law of secretary of state of Karnataka and others Vs. Umadevi and others [2006 S.C.C. (L&S) 753] and Bharat Sanchar Nigam Ltd. Vs. Teja Singh (Civil Application No. 292/2009 S.C.) These case law have been relied on behalf of the 1st party in support of such arguments that in spite of not giving notice pay and retrenchment compensation to the 2nd party Fatesingh on his termination, he or his heirs are not entitled' to either reinstatement or back wages or even lumpsum compensation. But on the other hand the relevant case laws 2012 LLR 1 S.C. (Supra) relied upon by the 2nd party certainly make out good case for the 2nd party for lumpsum cornpensation on violation of the provision of section 25F by the employer B.S.N.L 1st Party. More so, the case law of senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar seal and others [2010 (III)CLR 17S.C.] also held that instead of reinstatement and back wages being in case of termination of workmen's service found illegal relief of reinstatement with back wages is not to be automatically granted. Rather grant of reasonable monetary compensation would sub serve ends of justice.

13. This issue is, therefore, answered in negative holding that the action of the management of 1st party is not justified in terminating the service of Fatesingh without giving retrenchment compensation and notice pay.

14. ISSUE NO.I & II:- in view of the finding to issue no. III, IV and V in the foregoings I further find and hold that the reference is maintainable even raising dispute at belated stage and that this reference is survived since the 2nd party Fatesingh during his lifetime till his death on 29.10.2007 and after that to his legal heir (widow) substituted has got valid cause of action in this case.

15. ISSUE NO.VI:- The workman Fatesingh Dulabhai Bariya had completed more than 240 days of works in calendar year 1991, 1992, 1994 preceding termination so the management of 1st party was required to follow the mandatory provision of section 2SF of the Industrial Dispute Act, 1947 and the 1st party has admitted that

compliance of this provision was not made in case of workmen Fatesingh Dulabhai Bariya. More so, the workman Fatesingh died during pendency of the reference on 29.10.2007 and his widow substituted as 2nd party. In view of the case law reported in 2010 (III) CLR 17 S.C. grant of reasonable monetary compensation is the only remedy that would sub serve the ends of justice. There is no contrary evidence on behalf of the 1st party that since after termination Fatesingh Dulabhai Bariya was in gainful employment. Where as evidence of Fatesingh at Ext.7 shows he remained unemployment so considering all the facts and circumstances of the case a lump sum compensation of Rs. 40,000 (Rupees Forty Thousand only) is awarded to the 2nd party in this case against the 1st party.

This reference case is allowed accordingly in part. No order as to cost.

The management of B.S.N.L (1st party) are directed to pay the amount of compensation of Rs.40,000 (Rupees Forty Thousand only) with interest @ 9% per annum from the date of this award to the 2nd party Jantaben Fatesingh Bariya through a cheque or Bank draft.

This is my award.

Let Two Copies of the award be sent for publication u/ s 17 (1) of the I.D. Act.

B. K. SINHA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का.आ. 616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सब डिविजनल ऑफिसर, टेलीग्राफ डिपार्टमेंट एंड आथर्स, अहमदाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए-915/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2014 को प्राप्त हुआ था ।

[सं. एल-40012/432/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 3rd February , 2014

S.O. 616.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGITA-915/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The S.D.O., Telegraph Department & Other, Ahmedabad and their workmen, which was received by the Central Government on 28-1-2014.

[No. L-40012/432/2000-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 15th October, 2013

Reference: (CGITA) No-915/2004

Reference (I.T.C.) No. 06/2002(old)

Reference (I.T.C.) No. 20/2009

1. The General Manager
   Nagar Palika Building, Nadiad,
   Dist. Kheda-387001
2. The S.D.O, Telegraph Department,
   Behind S.T. Stand,
   Nadiad, Dist: Kheda-387001
3. The S.I.T. Indian Post & Telegraph Dept.
   Dakor Taluka: Thasra .... First Party

And

Their Workman

Sh. Ranjansinh Motibhai Patel
Through The General Secretary,
All Gujarat Karmachari Union,
Ashapurinagar, Near Swastik char rasta,
Bhilwada Road, Amraiwadi,
Ahmedabad-3800026 .... Second Party

For the 1st party: Shri N.K. Trivedi, Advocate

For the 2nd party: Shri G.K. Parmar, Union General Secretary

AWARD

The Central Government/ Ministry of Labour, New Delhi vide its order No. L-40012/432/2000-IR(DU) dated 12.02.2002 in exercise of power conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Dispute Act, 1947 , referred the dispute for adjudication on terms of reference under the Schedule:

SCHEDULE

"Whether the demand of Sh. Ranjansinh Motibhai Patel , a workman in the management of telecom for reinstatement in his original post with full back wages and with continuity of service and with all consequential benefits including the benefits of regularisation with arrears is just and legal? If so, to what relief the workman is entitled?"

2. The case of the workman (2nd party) as per statement of claim (Ext.5) shortly sated is that he (Ranjan Sinh) was engaged for work by the 1st party from 01.11.1984 and he continuously worked till 30.04.1985. Thereafter from 01.08.1991 he was engaged for work at S.I.T., Dakor and there he worked upto 30.04.1992 regularly and continuously and has completed more than 240 days of work. Thereafter he was removed/terminated from the work w.e.f. 01.05.1992 by oral order without complying with the provisions of I.D. Act. Then the 2nd party workman also met officers of the 1st party for engaging him on works and they only gave assurance that when need of work will arise he will be reengaged. The 1st party kept/ engaged new person for work but he was ignored. The 1st party has violated the provisions of sections 25F, 25G 25H of the I.D. Act, 1947. His oral termination by the 1st party is illegal and unjust. The workman through Union put demand before the management of the 1st party for reinstatement of workman with back wages but that went invain. And so dispute was raised seeking for the relief of reinstatement on the original post with back wages and for regularisation and for cost of litigation.

3. As against this the contention of the 1st party as per written statement Ext.12 is that the reference is not maintainable and the 2nd party has no cause of action. The 2nd party workman was engaged as casual labour in need of work intermittently and he never completed 240 days of work. He was not appointed by the 1st party, his name was not sponsored by the employment exchange rather on need of works he was engaged as casual labourer. Now the temporary works are being performed through contractor. The 2nd party workman was a casual labour and was not holding a post as that of regular employee. The allegation in the statement of claim para wise has been denied. On these scores, prayer is to dismiss the reference since the workmen/2nd party is not entitled to any relief.

4. In view of the rival contention of the parties in the pleadings the following issues are taken up for consideration and adjudication:

ISSUES

(I) Is the reference maintainable?

(II) Whether the 2nd party/workmen/union has valid cause of action in raising the demand?

(III) Whether the workman Ranjansinh Motibhai Patel has completed 240 days of work in the calendar year preceding his oral termination on 01.05.1992.?

(IV) Whether the 2nd party Union/Workman is entitled to the relief of reinstatement and back wages and for regularising as per terms of reference?

(V) What order are to be passed?

FINDINGS

5. **ISSUE NO.III:-**The 2nd party has produced two documents as per list Ext.13 on 11.07.2003 and marked Ext.15 and 16 on 20.02.2004. Ext. 15 is certificate granted by SDO phones Koyall. P.O. Jawahar Nagar, Baroda to Shri Ranjansinh Motibhai regarding his working in telephone cable party to Koyly with S.IP.N.S. Patel. This certificate shows that he worked for 176 days from November 1984 to April 1985. Ext. 16 is certificate of Indian post and Telegraph Dept. granted to the concerned workman Ranjansinh by S.D.O. Telegraph, Nadiad that shows that from 01.08.1991 to 30.04.1992 he worked for 265 days. It is said that from 01.05.1992 he was orally terminated from the casual work. Ext. 17 is oral deposition of the workman Ranjansinh Patel. He was also cross examined by the lawyer of the 1st party. The 1st party also examined its witness Hargovindbhai, Asst. General Manager, Telecom. He was also cross examined by the 2nd party Union representative.

6. Mr. N.K. Trivedi , learned counsel appearing for the 1st party argued that the 2nd party Ranjansinh was a casual labour engaged on need basis and so he has/had no right to the post. Reliance has been placed upon the case law of Himanshu Kumar Vidhyarthi Vs. State of Bihar [FLR 1997(76) 327 SC] . It has been further argued that he 2nd party after his work from 01.11.1984 to 30.04.1985 for 176 days as per Ext.15 did not work and subsequently after long gap he was engaged for work by the 1st party from 01.08.1991 to 30.04.1992 for 265 days vide Ext. 16 and thereafter he was disengaged w.e.f. 01.05.1992. Further argument is that the 2nd party was not appointed and not given appointment letter as that of regular/permanent employee of the dept. his name was not sponsored by employment exchange. The 1st party has also cited case laws of state of Himachal Pradesh Vs. Suresh Kumar and another. That appointment on daily wage basis is not appointed to post according to rule. It has been further argued that the 2nd party has raised dispute and put demand through Union after eight years through a letter dated 04.09.2002 and so the reference is barred by delay and latches Reliance has been placed upon the case law of state of Maharastra Vs. Dattatraya Digamber Birajdar (2009 LLR 1 132 S.C). Another case law of secretary state of Karnataka and others Vs. Umadevi (3) and others [2006 SCC (L&S) 753] and Bharat Sanchar Nigam Limited Vs. Teja Singh (Civil Appeal No. 292/2009 Supreme Court) have been cited on the point that the workman (S.P) is not entitled for reinstatement with back wages. It has been also argued that even the 2nd party had worked for 240 day in Calendar year does not give right of permanent status. Reliance has been pierced upon the case law of Gangadhar Pillai Vs. Siemens Ltd. (2007 Lab I.C. 590). Another case law of Bharat Sanchar Nigam Ltd. Vs. Mansingh and other [2010 STPL (web 966 S.C)] has been cited on behalf of the 1st party on the point of violation of

section 25F of the I.D. Act, 1947 where in their Lordships held that this court in catena of decision has clearly laid down that although an order of retrenchment passed in violation of section 25F of the I.D. Act may be set aside but an award of reinstatement should not be passed. This court has distinguished between a daily wagers who does not hold a post and a permanent employee and that instead monetary compensation would meet the ends of Justice.

7. On the other hand without confronting with the case laws cited on behalf of the 1st party, Shri G.K. Parmar learned representative Union has based his arguments that since the management of the 1st party has violated the provision of section 25F of the I. D. Act whereas the workman had completed 240 days of work in calendar year preceding termination so he should be reinstated with full back wages.

8. In the case of Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kr. Seal & others 2010 (III) CLR.17 their Lordship of the Hon'ble Apex Court have held that grant of reasonable compensation to the workman instead of reinstatement and back wages in case the termination of service is found illegal will sub serve the ends of Justice.

9. From the discussion above, it is proved that the workmen (the 2nd party) Shri Ranjansinh Motibhai Patel, had completed more than 240 days of work in calendar year preceding his termination on 01.05.1992. This issue is, therefore, decided in favour of the 2nd party/Union.

10. **ISSUE NO. IV:-** In view of the findings to Issue No. III and the relevant case laws of the Hon'ble Apex Court in the foregoings, it is now clear that in case of violation of section 25F of the I.D. Act by the employer in resorting to retrenchment of daily wagers as a matter of right the concerned workman who completed 240 days of work is not entitle for reinstatement and back wages rather award of reasonable compensation will sub serve the ends of Justice and that casual labour/daily rated wages does not hold any post as that of regular employee. Accordingly, this issue is decided against the 2nd party/Union.

11. **ISSUE NO. I and II :-** This reference is maintainable so far as entitlement of compensation from the 1st party is concerned and so in this way, the 2nd party/Union has valid cause of action to raise the dispute.

12. ISSUE NO.V:- Considering all the facts and circumstances of the case a lumpsum compensation of Rs. 20,000 (Rupees Twenty Thousand only) is awarded to the 2nd party workman Shri Ranjansinh Motibhai Patel which will sub serve the ends of Justice.

This reference is accordingly allowed in part. No order as to cost. The 1st party are directed to pay the amount of compensation of Rs. 20,000 to the workman (2nd party) with interest @ 9% per annum from the date 20.02.2004 (when the workman deposed in support of his statement of claim).

This is my Award.

Let two copies of' the award be sent to the appropriate Government for publication u/s 17 (1) of the I. D. Act, 1947.

B. K. SINHA, Presiding Officer

नई दिल्ली, 3 फरवरी, 2014

का.आ. 617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिविजनल रेलवे मेनेजर, अजमेर एंड अदर्स, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए-971/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-1-2014 को प्राप्त हुआ था ।

[सं. एल-41012/24/93-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 3rd February, 2014

S.O. 617.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGITA-971/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of The Divisional Railway Manager, Ajmer & Others, and their workmen, which was received by the Central Government on 28-1-2014.

[No. L-41012/24/93-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 26th November, 2013

Refernce: (CGITA) No. 971/2004

Reference (ITC) No. 22/1994 (Old)

1. Divisional Railway Manager,
   (then) Western Railway,
   Ajmer (Rajasthan)

2. Divisional Railway Manager,
   Western Railway,
   Ahmedabad (Gujarat) ..... First Party

And

Their Workman

M.O. Vashishtha,
Through the President, Western Railway,
Kamdar Sangh, T.B. Z-17, Gandhidham,
Kutch-370201 ... Second Party

For the First Party No. 1 : Shri Rakeshkumar P. Sharma

For the First Party No. 2: None

For the Second Party: Shri O.P. Vashishtha,
General Secretary,
(W.R.K.S.Union)

AWARD

The Central Government /Ministry of Labour, New Delhi vide Order No. L- 41012/24/9-IR(DU)) dated nil in exercise of the powers conferred under clause (d) of sub section (1) of section (10) of the Industrial Disputes Act, 1947, referred the dispute for adjudication to Industrial Tribunal, Rajkot on the terms of reference in the Schedule:

SCHEDULE

''Whether the demand of the Western Railway Kamdar Sangh, Gandhidham for fixing and notifying the seniority position of Shri M.O. Vashishtha, Clerk by the D.R.M. Western Railway, Ajmer with consequential benefits of promotion is legal and justified? If so, what relief is the said workman entitled to?''

2. The case of the 2nd Party (Union) as per statement of claim (Ext.2) dated 23.10.1994 is that workman Shri M.O. Vashitha was appointed as casual Labour under permanent way Inspector (P.W.I.) B.G. construction, W. Rly, Gandhidham on 21.05.1969. Then he was transferred under Chief Signal Inspector, Gandhidham on 13.05.1974. He was granted temporary status w.e.f. 21.01.1975 vide D.R.M. Ajmer letter in the scale of Rs. 196—232. Then he was promoted as Junior clerk in scale Rs. 225—308 vide D.R.M. Ajmer letter dated 28.04.1979 and was posted under Executive Engineer (C)/Xen (C) Ajmer. He joined as clerk on 14.05.1979. The executive Engineer (C) Ajmer raised objection for his seniority. Then workmen filed S.C.A. in Gujarat High Court which was transferred to the CAT, Ahmedabad as T.A. 11/86 and T.A. 11/86 was decided on 19.06.1987 directing the management to treat the appointment of the workman as telly clerk w.e.f. 01.06.1980 instead of 14.05.1979. Thereafter the workman made representations to the D.R.M., Ajmer and the General Manager, W.Rly., Mumbai for fixing the seniority position in Ajmer Division in the list of clerk scale 225—308/ 825—1200 by taking his date of appointment as clerk on 01.06.1980. The D.R.M. Ajmer vide staff order No. 297 EID/ 837/2 Vol II of 13.10.1980 notified the promotion of 45 persons with Shri Jagdishlal H. At Sl. No. 1 and Shri Kalooram at S1. No. 45. The workman requested the management to place his name in the seniority list of clerk scale Rs. 225—308/825—1200 above Shri Jagdishlal H. who was promoted after 01.06.1980. But the management did not pay any heed to his request and thus the action of the management head to his request and thus the action of the management of D.R.M. Ajmer in not fixing the workman's seniority position is illegal, unlawful and unjustified. The workman through the Union raised dispute before the conciliation officer A.L.C. (Central), Adipur but on failure of conciliation, followed by the reference order of the appropriate Govt. for adjudication. On denial of the fixation of the seniority of workman, the management of DRM Ajmer also denied the promotion to the workman whereas his juniors have been promoted as clerk in scale Rs.1400—2300. The 2nd party workman has been illegally denied promotion in scale 1400—2300 and in the scale of Rs. 1600—2600. On these scores prayer is to declare the action on part of the management (1st party) illegal and unjustified in not fixing and notifying the seniority position and for his promotion in clerk grade in scale Rs. 1400—2300 above Shri Jagdishlal H and Shankarlal P with all consequential benefits and to grant other relief if any to which he is found entitled with cost of reference.

3. As against this the contention of the 1st party (D.R.M.), Ajmer as per written statement (Ext.4) is that the reference is not maintainable. The demand of the Union does not constitute any industrial dispute. The Railway Establishment has got his own rules and regulations as regards the selection post, the employee claiming the said post, has to clear certain examination as prescribed. The concerned workman M. O. Vashishtha without having clear the prescribed examination claims the benefits for the selection post to which he is not legally entitled. The 1st party has denied the averment in para 3, 5, 6, 7 of the statement of claim specifically and with respect to para 2 of S/c it is contended that the workman was not having 3 years' service in class IV grade he was directed by XEN (C)/Ajmer to his original post on Ajmer Div. Then as per order dated 19.06.1987 of CAT, Ahmedabad in T.A. 11/86, the workman was treated as Telly Clerk w.e.f. 01.06.1980 and thus he was continued to work in the post of telly clerk under XEN (C), Ajmer and was posted at Chittorgarh. On these scores contention of the 1st party is that the workman is not entitled to get any relief as prayed at para 8 of statement of claim and the reference is liable to be dismissed.

4. The 2nd party also submitted rejoinder to the statement of claim vide Ext.5 mostly reiterating the same fact as that of statement of claim (Ext.2). However, adding more to his case vide para 3(b) that the workman was put to the selection of clerk scale Rs. 950—1500 by the construction department where he was declared successful as clerk Rs. 950—1500 under Order No. E/1026/2/2/ (S&C)

of 01.10.1987 and he was promoted as clerk scale 950—1500 under Deputy (E)(C) Bhuj is continuing in the same post till date. But his seniority was not maintained in the clerk grade in scale Rs. 950—1500 and clerk scale 1200—2040 till date which is violation of order of CAT, Ahmedabad dated 19.06.1987. The selection exam passed by workman in the construction dept. is valid and operative on Ajmer Division also. But no seniority list as telly clerk scale 225—308/825—1200 and clerk scale 950—1500 has been maintained on Ajmer Division till date. Thus denying all the contention of the 1st party as per w.s. (Ext.4) the workman further claim that he is legally entitled for the relief claimed.

5. This is pertinent to mention here that the workman Shri M.O. Vashishtha was working at Ganghidham which was coming under the Jurisdiction of D.R.M., Ajmer (W.Rly) but w.e.f. 01.04.2003 Gandhidham Rly. came under territorial jurisdiction of newly established D.R.M. Ahmedabad. So as per order dated 20.01.2012 (Ext.42) D.R.M., Ahmedabad has been also impleaded as the 1st party and notice issued in this case.

6. In view of the rival contention of the parties in their pleadings the following issues are taken up for consideration and for adjudication to the term of reference.

ISSUES

(i) Is the reference maintainable?

(ii) Whether the 2nd party has got valid cause of action to raise industrial dispute ?

(iii) Whether the demand of the Union as per terms of reference is legal, justified and proper?

(iv) Whether the 2nd party is entitled to the relief as claimed?

(v) What order/Orders are to be passed?

FINDINGS

7. ISSUE NO. iii & iv : On behalf of the 2nd party 4 documents were produced as per list Ext.18 and have been marked Ext.19 to 22. Ext.19 is copy of order dated 19.06.1987 passed in T.A. No. 11 of 1986 by the CAT, Ahmedabad Bench, admittedly the appointment of workman M.O. Vashishtha as telly clerk from 14.05.1979 was not accepted and as per CAT's order his appointment as telly clerk was found valid w.e.f. 01.06.1980. So, initially the promotion of workman as Jr. Clerk scale 225-308 (Rs) has to be reckoned form 01.06.1980. Ext. 21 is staff office order No 297 of Mandal Karyalay, Ajmer through which 45 class iv staff who have been placed on provisional panel for the post of Jr. Clerk scale 225-308 ® were provisionally promoted to officiate as Jr. Clerk scale Rs. 225-308 (R) and posted in the offices as specified. The name of M.O. Vashishtha does not find place in the list. The 2nd party claims that name of M.O. Vashishtha should be above Sl. No. 1 Sh. Jagdish Lal H. who was promoted after 01.06.1980. But from Ext.21 it is manifestly clear that Sl. No. 1 Sh. Jagdish Lal H. to SI. No. 45 had been placed on provisional panel for the post of junior clerk from before. But such is not case of the workman M.O. Vashishtha since his appointment to telly clerk was to be taken from 01.06.1980 and he had not been placed on provisional panel for the post of junior clerk. Ext.22 is representation of M.O. Vashishtha dated 12.01.1990 for fixation of his seniority position clerks scale 825-1200 & scale 950-1500 in Ajmer Division. The workman has demanded for seniority and future promotion from 01.06.1980, on the basis of Apex Court order passed in writ petition No. 648/2000 in the case of Indrapal Yadav Vs. Union of India & others, the copy of which filed by the 2nd party with list Ext.27. But on careful, perusal of the order it does not transpire that an employee while serving in such project, they have been granted provisional promotion in a particular corresponding scale of pay on the basis of supplementary trade test held in the project itself. It has been directed in the order also ..... "it is open to the railway administration to utilise the service of the petitioners in the open line, they must for the purpose of determining efficiency and fitment take into account the trade tests which may have been passed by the petitioners ....."

8. It has been argued on behalf of the 1st party that the post of clerk, senior clerks and so on so are selection grade post and for getting promotion in next higher scale it is essential to appear in the test examination but the concerned workman M.O. Vashishtha never appeared and passed in the examination held by the Ajmer Division in spite of notice and reminder to him. In support of such argument, the 1st party has relied upon documents Ext. 9, 10, 11, 12 and 13 produced with list Ext. 8. Ext. 9 is office order dated 25.11.1985 of Ajmer Division regarding holding of examination on 01.12.1985 at 10:00 a.m. Ext.10 is office order dated 10.12.1985 of Ajmer Division W.Rly regarding selection of Group D employee in junior clerk mention the name of 12 persons calling them for written exam at 10 a.m. in meeting hall at Ajmer. The name of M.O. Vashishtha is at Sl. No. 11 (X-EN (C) Jamnagar) Ext. 11 is attendance sheet of examination in view of Ext. 10 which go to show that M.O. Vashishtha besides 5 others out of 12 did not appear in the examination and remained absent. On the other hand the claim of the 2nd party is that the workman M.O. Vashishtha since had passed the written suitability test for promotion as clerk scale Rs. 950-1500 (RP) held on 02.08.1988 at Mumbai and his name was interpolated at Sl. No. 9A i.e. between Shri H.P. Bhatt and K. Shrinivasan of the panel issued vide memorandum C.E(S&C)'s office Churchgate, Mumbai Ext.23) so the workman was not required to again appear in the written test/trade test for getting promotion in higher scale in the Ajmer Division. Such contention of the 2nd party does not appear to be convincing. Because the concerned workman M.O.

Vashishtha without further clearing the prescribed examination held in Ajmer Division cannot claim benefits for the selection post of clerk in the scale Rs. 1400-2300 and above in the scale Rs. 1600- 2660. The argument of the 1st party is convincing that the length of service is not criterion for getting promotion in next higher scale automatically without clearing departmental exam held in the Ajmer Division where the workman was working. He cannot get the benefit all along in perpetuity by virtue of Ext.23.

9. The concerned workman Shri M.O. Vashishtha in his oral evidence vide Ext.14 could not have been able to substantiates his claim of seniority and due promotion as claimed as per statement of claim. On the other hand, the oral evidence of the 1st party witness Gopal is acceptable that without appearing in selection grade examination M.O. Vashishtha cannot claim automatic promotion in higher scales and that if his juniors cleared the selection exam then certainly juniors will get benefit of promotion then M.O. Vashishtha who did not appear in selection exam for higher scales. The 2nd party has heavily relied upon the order of the Apex Court passed in Indrapal Yadav & others Vs. Union of India & others. But in true sense the concern workman cannot get benefit of higher scales of Rs. 1400-2300/1600-2660 or its corresponding scales without clearing stage to stage trade test/written examination.

10. Thus, on consideration of the oral and documentary evidence discussed above, I am of the considered view that the demand of the Union (Western Railway Kararnchari Sangh, Gandhidham) for fixing and notifying the seniorty position of Shri M.O. Vashishtha, clerk by D.R. M., the then western railway, Ajmer or by D.R.M. western Railway, Ahmedabad with consequential or benefits of promotion is not legal and unjustified and so the 2nd party/ workman Shri M.O. Vashishtha is not entitled to the relief as claimed. These issues are decided against the 2nd party.

11. ISSUE NO. I, ii, & v:- In view of findings given to issue No. iii & iv in the foregoing paras, I further find and hold that the reference is not maintainable and the 2nd party/Union has no cause of action to raise dispute.

As a result the reference is dismissed. No order of any cost.

Let two copies of the award be sent for publication u/s. 17 of the I. D. Act to the appropriate Government.

B. K. SINHA, Presiding Officer

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